

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
(WESTERN DIVISION - LOS ANGELES)

JEFFREY POWERS, ET AL,	)	CASE NO: 2:22-cv-08357-DOC-KS
	)	
Plaintiffs,	)	CIVIL
	)	
vs.	)	Los Angeles, California
	)	
DENIS RICHARD MCDONOUGH,	)	Thursday, November 7, 2024
ET AL,	)	
	)	(11:25 a.m. to 1:43 p.m.)
Defendants.	)	

HEARING RE INJUNCTIVE RELIEF

BEFORE THE HONORABLE DAVID O. CARTER,  
UNITED STATES DISTRICT JUDGE

APPEARANCES: SEE PAGE 2

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**Also present:**                   **CHELSEA BLACK**  
**KELLY FARRELL**  
**RANDY JOHNSON**  
**ROB MERCHANT**  
**JONATHAN SANDLER**  
**STEVEN SHORTLAND**  
**STEVE SOBOROFF**

1 Los Angeles, California; Thursday, November 7, 2024; 11:25 a.m.

2 --oOo--

3 **THE COURT:** All right. Let's go on the record. Oh,  
4 Don, would you do me a favor, would you bring out those charts,  
5 the big charts?

6 Counsel, have a seat and I hope all of you are well.  
7 We're on the record in the matter of Jeffrey Powers versus  
8 Denis Richard McDonough. It's Case No. 22-08357.

9 And just remain seated. Because we're on CourtSmart  
10 I need you to make your appearances formally.

11 **MR. SILBERFELD:** Good morning, Your Honor, Roman  
12 Silberfeld for the plaintiffs.

13 **THE COURT:** Good. And how is your colleague doing?

14 **MR. SILBERFELD:** Everybody's good, thank you.

15 **THE COURT:** How's his hand doing?

16 **MR. SILBERFELD:** Improving slightly.

17 **THE COURT:** Okay. All of you know he broke his hand.  
18 All right. Counsel, on behalf of the Government.

19 **MR. ROSENBERG:** Good morning, Your Honor, Brad  
20 Rosenberg from the Department of Justice, Civil Division --

21 **THE COURT:** All right.

22 **MR. ROSENBERG:** -- Federal Programs Branch on behalf  
23 of the federal defendants.

24 With the Court's permission, I have agency counsel  
25 who would like to be able to listen in to this hearing.

1           **THE COURT:** Absolutely. In fact, if he'd like to  
2 join us or she, whoever, by Zoom it's more than welcome. And,  
3 Cody, why don't you make your appearance. Good to have you  
4 back with us.

5           **MR. KNAPP:** Cody Knapp for the Government, Your  
6 Honor, thank you.

7           **THE COURT:** Ms. Black?

8           **MS. BLACK:** Chelsea Black, VA.

9           **THE COURT:** And then, Rob, it's good to have you back  
10 with us.

11           **MR. SHORTLAND:** Steven Shortland, Agency counsel.

12           **THE COURT:** I'm sorry, I couldn't hear you.

13           **MR. MERCHANT:** Robert Merchant, Department of  
14 Veterans Affairs.

15           **THE COURT:** And then, counsel, turn on your  
16 microphone because we couldn't hear.

17           **MR. SHORTLAND:** Steven Shortland, agency counsel.

18           **THE COURT:** Okay. Thank you very much.

19           **MR. SANDLER:** Jonathan Sandler, Your Honor,  
20 Brentwood.

21           **THE COURT:** Okay. Now is UCLA here also? They don't  
22 have to be here but I don't know where this goes today, so  
23 they're always invited and I hope that they're here on each  
24 occasion.

25           I'm going to turn this over to you folks, to give me

1 some guidance today. Because there's three things really that  
2 have come in rapidly. One is the request for an emergency  
3 order No. 3. The second thing is leave to intervene,  
4 concerning the school. And the third is the briefing which is  
5 due tomorrow from the plaintiffs concerning the emergency writ  
6 and whether there's going to be rebuttal or argument on that  
7 from both counsel.

8 So I'm going to turn this over to plaintiffs to begin  
9 and then back over to the VA.

10 **MR. SILBERFELD:** There is one other item that we can  
11 add to the agenda, Your Honor. We filed a status update --

12 **THE COURT:** Oh, yeah.

13 **MR. SILBERFELD:** -- yesterday with respect to the --

14 **THE COURT:** I've got it. I've got it, counsel. I've  
15 read it.

16 **MR. SILBERFELD:** Okay. Great.

17 **THE COURT:** It's got three exhibits to it.

18 **MR. SILBERFELD:** Yes.

19 **THE COURT:** Yeah, I've got it. Just one moment, I'll  
20 need those three exhibits. And, counsel, bear with me.

21 **MR. SILBERFELD:** I have extra copies.

22 **THE COURT:** No, I've got it right here.

23 **(Pause)**

24 **THE COURT:** If you'd make a copy for me. I need  
25 those three exhibits that go with it, they're A, B and C.

1           **MR. SILBERFELD:** Here's some extras.

2           **(Pause)**

3           **THE COURT:** Well, counsel, I'm sorry. I've got that  
4 right in front of me, it's the plaintiff's status update for  
5 November 7th.

6           **MR. SILBERFELD:** Yes, Your Honor.

7           **THE COURT:** I've got that, thank you.

8           **MR. SILBERFELD:** So maybe the easiest way to do this  
9 is to take the simplest items first.

10                   I think we have an agreement between the plaintiff  
11 and the federal defendants that with respect to the motion to  
12 stay we will file our brief tomorrow, as the Court has allowed,  
13 that there will be no reply and that both sides agree that the  
14 Court may decide the matter on the papers without a hearing.  
15 If the Court so wishes.

16           **THE COURT:** I'm going to hear oral argument on that,  
17 no matter what.

18           **MR. SILBERFELD:** Okay.

19           **THE COURT:** And so you pick the date, I'm going to  
20 be -- obviously Veteran's Day is the 11th, Monday.

21           **MR. SILBERFELD:** Right.

22           **THE COURT:** Hopefully be home with their families or  
23 celebrating. Tuesday I start a trial, but we already having  
24 hearings set for the 13th, don't we?

25           **MR. SILBERFELD:** We do.

1           **THE COURT:** I'm suggesting that those oral arguments  
2 take place the 13th. And if the two of you would like  
3 rebuttal, I'm offering that to you, not requiring it. I would  
4 suggest it be limited to five pages and it would be rebuttal  
5 and surrebuttal to the opposition and the opening brief.

6           Why don't you two talk for just a moment. But I'll  
7 schedule this for oral argument I believe on the 13th because  
8 we're already in session that day and I want to pay you the  
9 courtesy of rebuttal and surrebuttal limited to five pages,  
10 based upon the opening by the Government and the opposition  
11 that you'll file tomorrow by the plaintiff.

12           **(Pause)**

13           **THE COURT:** Now, I know that'll take some of your  
14 time over the weekend, but we're working over the weekend, so.

15           **(Pause)**

16           **THE COURT:** Cody?

17           **MR. KNAPP:** Your Honor, so we're happy to see what  
18 plaintiffs file tomorrow and decide then whether filing a reply  
19 is necessary as of Tuesday. We're also happy to appear for  
20 argument on the 13th. I will note though, Your Honor, we've --  
21 in addition to asking for the partial stay, we've asked for an  
22 immediate administrative stay that gives us ten days to comply  
23 with the Court's ruling regarding procurement contracts.

24           **THE COURT:** I'm going to make this easy for us so  
25 we're not wasting time. Your rebuttal and surrebuttal to the

1 opening and the opposition is due on Tuesday by 12 noon.

2 Now, if you decide not to exercise that, so be it.  
3 It's limited to five pages, because I will have the majority of  
4 your arguments in the opening brief. It's a courtesy to each  
5 of you, so you have a chance and you're also not guessing over  
6 the weekend.

7 Because I would give you both an opportunity based  
8 upon the papers for a five page limited brief, and therefore,  
9 if you made that decision on Monday, I would have a problem  
10 with counsel saying he didn't have enough time, so Tuesday, 12  
11 noon, rebuttal, surrebuttal limited to five pages. Oral  
12 arguments take place on Wednesday, the 13th.

13 **MR. KNAPP:** Okay. But then again, Your Honor, I  
14 think that -- I just want to be clear with Your Honor. The  
15 procurement order that Your Honor entered, the compliance  
16 deadline runs until the 12th. We've asked for an  
17 administrative stay of that order that would give us some  
18 comfort that we weren't at risk --

19 **THE COURT:** I understand that. Let's --

20 **MR. KNAPP:** -- of contempt, you know, the day after  
21 an order is denied.

22 So we need some comfort that we're not going to be in  
23 that situation --

24 **THE COURT:** Why?

25 **MR. KNAPP:** -- in order to evaluate --



1           **THE COURT:** Why?

2           **MR. KNAPP:** -- you know -- because we want to give  
3 Your Honor --

4           **THE COURT:** In other words -- just a moment.

5           This is coming out of the order that I expected. But  
6 if I believe this is an emergency and you've represented to me  
7 that you can have this procurement done, then why am I granting  
8 an administrative stay?

9           **MR. KNAPP:** Because, Your Honor, that is the first  
10 harm that we expect to accrue to the agency that would be  
11 irreparable and, you know --

12           **THE COURT:** But, Cody, then what you're really saying  
13 is that you don't want the modulars to go forward. I mean,  
14 that's really the end result of all of this and that is that,  
15 Judge, we don't even want to put up the money for the modulars  
16 and your papers thus far, and I don't want to get into this  
17 argument is, because we have produced 32 temporary units and  
18 what I'm going to call a domiciliary situation. And you've  
19 stated in your papers that you're short of money. Correct?

20           **MR. KNAPP:** I think that's among the statements we've  
21 made.

22           **THE COURT:** No, let's be specific. I want to be very  
23 blunt and direct now.

24           **MR. KNAPP:** Yep.

25           **THE COURT:** You don't have the money.

1           **MR. KNAPP:** Your Honor --

2           **THE COURT:** That's what your papers say.

3           **MR. KNAPP:** There is no funding set aside currently  
4 for the orders that Your Honor has entered. You know, I think  
5 that --

6           **THE COURT:** There's no funding set aside but that's  
7 far different than having cash reserves available and, Cody,  
8 what are your cash reserves right now? It's a matter of public  
9 notice because Congress has had hearings with the VA on this.  
10 What are your cash reserves?

11           **MR. KNAPP:** Your Honor, if you're speaking of the  
12 lease revenue funds, I believe that they are just north of \$3  
13 million here on the campus.

14           **THE COURT:** Billion. Nationwide, you have cash  
15 reserves of between 2 and 3 billion. Do you know that, Cody?

16           **MR. KNAPP:** Well, that may be true as to reserves,  
17 Your Honor, I actually don't know that personally.

18           **THE COURT:** Cody, do you know that Congress has also  
19 called the VA on the carpet quite frankly about the other 3  
20 billion and questioning the 5 billion?

21           **MR. KNAPP:** Your Honor, what I know is that the VA --

22           **THE COURT:** Are you familiar with asking Congress  
23 about another 12 billion that Congress has pushed back strongly  
24 on? This is all public record.

25           **MR. KNAPP:** Your Honor, what I know is that as soon

1 as the VA is under an obligation under threat of contempt to  
2 execute a procurement contract that would obligate funds that  
3 would create future liabilities for the agency that it views  
4 that as an irreparable harm, that even if we were to succeed in  
5 our appeal, that that would not be able to be undone.

6 And we need some comfort from the Court, you know,  
7 the Court has previously said it would work with us on the  
8 compliance state for the execution --

9 **THE COURT:** No, you said you'd work with the Court in  
10 terms of getting up the hundred modulars. It's quite the  
11 opposite. I thought you initially took a very humane position  
12 that at least we could get a hundred people off the street. I  
13 thought we had that kind of at least working relationship. To  
14 minimally get a hundred veterans off the street.

15 And hearing this argument that you don't have funding  
16 or that you're telling the Court, and generally the American  
17 public that 32 domiciliary units with your cash reserves in  
18 place, I really question this. And I really question why it's  
19 not the opposite, why you're not working with the Court to get  
20 these hundred people off the street. That doesn't hurt you in  
21 terms of an appeal, Cody.

22 **MR. KNAPP:** Judge --

23 **THE COURT:** It doesn't hurt you in terms of any other  
24 expenditures if we move beyond a hundred. It doesn't hurt you  
25 with long term supportive housing. You're actually able to do

1 some quite humane, get a hundred veterans off the street  
2 quickly. So I'm afraid the process and procedure and the fact  
3 that you really don't want the federal court involved, and  
4 that's the bottom line, and we're going to go right back to  
5 Valentini unless the court's involved, because quite frankly  
6 we're going to have an opinion from a court with no teeth to  
7 it.

8 We're going to go right back to Valentini and when we  
9 turn that back to the VA, what happened, Cody? A ten year  
10 lease which tied up the property, that's why you've got a one  
11 year limitation. I don't care quite frankly if the VA  
12 negotiates, in fact, I would encourage you to negotiate. I  
13 would probably modify this opinion and give you that power. I  
14 just care that you can't tie up this property for ten years on  
15 these sweetheart leases quite frankly. Because then, your  
16 position to begin with, Cody, was we in the VA don't have  
17 property, but you completely ignored Brentwood and you  
18 completely ignored UCLA.

19 So if I allow you then to go back to a ten year  
20 lease, you're able to come back and say, Judge, look at these  
21 ten year leases. In addition, it's astounding to me how you  
22 can negotiate a ten year lease in 2016 at 1 percent cost of  
23 living, inflation, look at that lease, Cody, who made that  
24 deal?

25 Now, Brad wants to give you -- Brad, come on up to

1 the lectern, you can speak for goodness sakes. Give him some  
2 help here. Why don't you work with me and get that -- and why  
3 don't you work with counsel over here and get these hundred  
4 modulars up right now, I mean just for the goodness of  
5 veterans?

6 **MR. KNAPP:** So I do want to be clear, Your Honor.

7 **THE COURT:** I want to be clear with you too.

8 **MR. KNAPP:** We are --

9 **THE COURT:** Why can't you do that?

10 **MR. KNAPP:** We are working with plaintiff's counsel  
11 and their experts, we are working with the Court, but that is  
12 all subject to an order of the Court requiring the construction  
13 of permanent supportive housing, the placement of temporary  
14 supportive housing on the campus, all of which is the subject  
15 of our pending appeal --

16 **THE COURT:** And we know you've got the money, Cody,  
17 even if your papers say \$30 million which is much too high  
18 quite frankly to fund these hundred modulars.

19 **MR. KNAPP:** And I think at bottom, Your Honor,  
20 because I understand we're going to have argument on the stay  
21 motion itself, so we're getting into --

22 **THE COURT:** Sure.

23 **MR. KNAPP:** -- all of those issues now.

24 The one thing that I wanted to raise with the Court  
25 today is the need for the administrative stay that we've asked

1 for or something like that that gives us assurance that as that  
2 process plays out, and as we wait for the Court to reach a  
3 ruling, which we do want to give the Court the opportunity to  
4 rule --

5 **THE COURT:** Which then stalls these modular homes for  
6 another period of time, plus procedure over quite frankly  
7 substance again.

8 **MR. KNAPP:** And I do appreciate the Court's --

9 **THE COURT:** And that's not for the principal benefit  
10 of the veterans. That's supposed to be my guiding standard and  
11 I don't see that coming from the VA.

12 **MR. KNAPP:** And I do appreciate the Court's  
13 perspective on these issues, I really do.

14 **THE COURT:** And I appreciate yours also, Cody. I  
15 don't mean to be as blunt, but I really do mean to be blunt.  
16 This is harmful, Cody. This is not the legacy I think your  
17 agency wants to write, is it? That a hundred -- you can't  
18 break the iceberg with a hundred modulars and you're claiming  
19 you don't have money. Is that really the legacy of this VA?  
20 Now, Brad, go up and help him, talk to him, and you can speak  
21 if you want to and tell me about your legacy.

22 What I think is, really, let's be blunt, what you're  
23 really afraid of is you have to front this money and that this  
24 money goes out and we've got modulars, you know, as you're  
25 appealing me.

1           **MR. KNAPP:** Uh-huh.

2           **THE COURT:** And frankly I'm going to guess you'd like  
3 to stretch out the appeal so you never front the money because  
4 you're a little chagrined that the federal court might be  
5 involved and we'd be back to Valentini again and some opinion  
6 from some judge with no teeth to it, because you want all that  
7 power back.

8           And from the plaintiff's perception they don't trust  
9 you. They don't trust you because the VA had this conversation  
10 number one trying to shut the veterans out. Number two, that  
11 you have these sweetheart leases for 1 percent. Number three,  
12 that you're tying up this property for ten years, which makes  
13 it then the Court or somebody having to break these leases.  
14 Why is that power going to be given back to you totally without  
15 some judicial oversight?

16           **MR. KNAPP:** And again I think that these are all  
17 issues that we are asking the Court to weigh in on in the stay  
18 motion and --

19           **THE COURT:** I'm asking you to --

20           **MR. KNAPP:** -- also asking --

21           **THE COURT:** I'm asking you to keep your word and  
22 front this money.

23           **MR. KNAPP:** And asking the Ninth Circuit to weigh in  
24 on an appeal --

25           **THE COURT:** I'm asking you to keep your word and

1 front this money for the ten modulars.

2 **MR. KNAPP:** And so I --

3 **THE COURT:** Now, Brad, go up and help him because I  
4 can see you twitching.

5 **MR. KNAPP:** I just --

6 **THE COURT:** Come on up. Cody, you're smart, Brad  
7 wants to help you, he's moving in his chair.

8 **MR. KNAPP:** I think I know what he's going to say.

9 **THE COURT:** Okay.

10 **MR. KNAPP:** Which is we need some assurance from the  
11 Court that, you know, when the 13th comes and we have a hearing  
12 and the Court denies our stay motion that we have some time  
13 before our client agency is at risk of contempt.

14 **THE COURT:** Let's leave that on the table then until  
15 the 13th.

16 **MR. KNAPP:** But we need some period of time after  
17 that that gives us certainty that the following day we're  
18 not --

19 **THE COURT:** I think we need a hundred veterans off  
20 the street. I think you need to front this procurement money  
21 like you said and keep your word.

22 **MR. KNAPP:** So just to be clear, I'm understanding  
23 that the Court is not going to grant our request for an  
24 administrative stay.

25 **THE COURT:** I haven't said that yet, I'm leaving that



1 to your wisdom right now to really think about where you and  
2 the VA want to be in terms of veterans. I'm going to ask you  
3 to go back and make that call to whoever is in Washington, D.C.  
4 hiding behind the curtain of DOJ and the VA so we don't have a  
5 specific person here making those decisions to really decide if  
6 this is what you want your legacy to be. I'm asking you to  
7 reconsider that.

8 **MR. KNAPP:** And we hear Your Honor and we --

9 **THE COURT:** Start helping these veterans.

10 **MR. KNAPP:** We hear Your Honor and we appreciate the  
11 Court's perspective.

12 **THE COURT:** Okay. If that's your legacy so be it,  
13 but go back and I haven't ruled against you yet. I'm asking  
14 you to go back and consider. I'm asking you to make that phone  
15 call.

16 **MR. KNAPP:** Well, I --

17 **THE COURT:** I'm asking you to get this procurement  
18 like you said.

19 **MR. KNAPP:** I'm in a --

20 **THE COURT:** I'm asking you to get a hundred veterans  
21 off the street and out of the rain.

22 **MR. KNAPP:** I today, and this will not change, the  
23 position of the Government is that we need an administrative  
24 stay --

25 **THE COURT:** Who?

1           **MR. KNAPP:** -- of at least ten days --

2           **THE COURT:** No, just a moment. Who in the  
3 Government? You see, you hide behind DOJ or the VA as a label,  
4 as a bureaucracy with great credibility, but we never get a  
5 name, do we? We never get a visit from McDonough, we never get  
6 who the DOJ is making these decisions, is it Merrick Garland,  
7 is it at his level? We just hide behind we, the Government, we  
8 the bureaucracy, we never have anybody responsible for these  
9 decisions. Quite frankly that's the problem.

10           Okay. Now, I'm asking you to go back and consider,  
11 I'm not going to make a ruling on that today. I'm going to ask  
12 you to make a phone call to whoever is making this decision.  
13 I'm asking you to procure this for a hundred veterans out of  
14 the rain. I'm asking you not to have any further delay at  
15 least for these hundred and that doesn't hurt you, Cody, on  
16 your appeal or your emergency writ with the other 650 temporary  
17 or 1,800. I think that's the legacy that the VA should write.  
18 Okay?

19           All right. Now have a seat. I think we've had our  
20 say with each other. Now, counsel.

21           **MR. SILBERFELD:** Your Honor, I think what we ought to  
22 take up next is the ex parte application for an emergency  
23 order. I can tell the Court essentially what's already in the  
24 very brief papers that we filed.

25           **THE COURT:** Yeah, this is order No. 3?

1           **MR. SILBERFELD:** Yes, Your Honor.

2           **THE COURT:** All right.

3           **MR. SILBERFELD:** In substance, this all began on  
4 October the 28th. That day we also had a hearing here in the  
5 afternoon but we were at the site in the morning with  
6 approximately 14 or 15 of our consultants, VA representatives  
7 were there, Ms. Black was there, others as well. And it became  
8 clear the next day after we surveyed sites and got some  
9 information from the chief engineer of the VA property out  
10 there in West LA that the wet and dry utilities for certain  
11 sites exist, but we didn't know exactly where the runs would go  
12 and what would be in the way of the runs.

13           And so the civil engineer we retained, a firm by the  
14 name of Somas (ph), this is by the way also a firm that does  
15 work with the VA. The Somas firm came back to me and said,  
16 listen, we need access to the property.

17           **THE COURT:** Now which property, there's three?

18 There's Magenta B, there's 7 and there's 4-A.

19           **MR. SILBERFELD:** And 5.

20           **THE COURT:** And 5.

21           **MR. SILBERFELD:** There's four of them.

22           **THE COURT:** I thought all of you had taken by  
23 stipulation 5 off. I wouldn't have quite frankly, but you  
24 stipulated to this.

25           **MR. SILBERFELD:** Yeah, I think we're reconsidering 5.

1 But purposes of this application, what the Somas civil engineer  
2 people told us was that they need to go on the property and do  
3 ground penetrating radar to figure out what's underneath the  
4 asphalt.

5 **THE COURT:** Uh-huh.

6 **MR. SILBERFELD:** They may also depending upon what  
7 they find from the radar, which by the way is not destructive  
8 of anything, they may also have to do potholing. They would  
9 repair the potholes, in order again to find out what's in the  
10 way of the placement of some of the utility connections that  
11 are contemplated for the hundred units.

12 We had the site visit on the 28th. I learned about  
13 this request on the 29th. I wrote to Ms. Black on the 31st,  
14 which was -- I guess that's just a week ago now. And I asked  
15 Ms. Black because I think she was traveling or somebody was  
16 out, I said please get back to me by Monday, the 4th as to  
17 whether or not VA will allow access, will allow the civil  
18 engineers to come on the property for purposes of figuring out  
19 what's beneath the surface.

20 I got a response Monday afternoon from Mr. Rosenberg  
21 and the answer was no, we're not going to allow you access. We  
22 had a meet and confer call about this two days ago on Tuesday.  
23 I explained in that call why this was important and why this  
24 was necessary.

25 Fundamentally the reason for this work is because

1 without it, the contractors are actually going to place these  
2 housing units and make the connections, will only do the work  
3 on a time and materials basis, which is effectively an open-  
4 ended contract and no one wants that with a subcontractor.

5           What we want is we want a fixed price contract and  
6 the contractors are saying to us we won't do that unless we  
7 know what's below the surface. So the meet and confer that we  
8 called that we had on Tuesday ended with no change of position.  
9 I filed the ex parte application on Wednesday. My declaration  
10 that's filed in support of it basically says what I just  
11 recited to the Court. And we're here today because the hundred  
12 units that we've all at least our side has wanted with the  
13 Court to have placed by February 1 that will not happen, if we  
14 don't have access to the property.

15           We're not asking the VA to pay for anything. I'm  
16 fronting the cost of the whole thing. But we need access and  
17 if we don't have access, this entire exercise, this entire  
18 project of getting a hundred units put out there stops. And so  
19 that's what the emergency order is asking for.

20           **THE COURT:** I want to hear from Mr. Johnson and  
21 Mr. Soboroff. I want to hear from Ms. Black or from Brad  
22 because I know, Brad, in your papers you said you didn't have  
23 time to respond but you respond in court, so.

24           All right. So now what's occurring out there, I want  
25 to hear once again -- and by the way, before you open, remember

1 I took 5 off the list of the four paved parking lots because  
2 you both stipulated.

3 **MR. SOBOROFF:** Right.

4 **THE COURT:** Quite frankly the only reason 4-A is  
5 involved, which you object to on the south campus is because 5  
6 is off the board. If 5 was on the board, I don't know that I  
7 would be looking at 4-A right now because you've got the  
8 hospital going in. And I'm not too certain I agree with you,  
9 but you both stipulated to it because it was near the  
10 domiciliary.

11 To me that seems silly, because somebody can walk out  
12 of the domiciliary, just two blocks and go up to the new  
13 housing being built, let alone one block. But that was your  
14 choice. That's why you're with 4-A right now and we may never  
15 have gotten to 4-A at least at this time if 5 was on the board.  
16 And you still have south campus intact, so that was all of your  
17 choice.

18 **MR. SOBOROFF:** Judge, Doctor -- Steve Soboroff,  
19 expert witness for the plaintiffs for the veterans here with  
20 Randy Johnson and Kelly Farrell from Gensler.

21 The reason that 5 came back in is Dr. Sharon (ph)  
22 told us that he thought that there could be a way to integrate  
23 5 and bring the site back and not have to go to 4-A and so we  
24 put it back in and it was a technical mental health possibility  
25 and we thought we should put it back on.

1           **THE COURT:** Okay.

2           **MR. SOBOROFF:** So, Judge Carter, during the next few  
3 minutes we will present to the Court our completed homework  
4 assignment from last week.

5           The prioritization of the permanent supportive  
6 housing and temporary supportive housing locations and give  
7 utility, soils and site prep updates. Importantly we're also  
8 present a realistic plan to create room for the housing goals  
9 by removing specific non-historical under-used buildings that  
10 are in horrible condition.

11           In took dozens of folks from some of this region's  
12 top experts in all facets of safe site preparation to do this.  
13 I want to take this opportunity to thank them all for dropping  
14 other work to prioritize the vets.

15           Many meetings, Zooms, calls, and site visits. We  
16 want to acknowledge the cooperation of the VA, which Roman  
17 already did in bringing their site folks to the October 28th  
18 site meeting that began at the parking lot adjacent to UCLA  
19 baseball stadium.

20           Before I turn this over to Randy and Kelly and many  
21 of our bus to yes team members, I want to say that many of our  
22 bus to yes team members have kids who've overheard a lot of our  
23 calls, this has been going on 20 hours a day for -- you give  
24 tough homework assignments, Judge.

25           Here's a letter from an 8-year old son of one of

1 them.

2 **THE COURT:** And why don't you put these up on the  
3 Elmo if you're going to show. Karlen, we'll need the help with  
4 the Elmo. I'd like to see it on a screen.

5 **(Pause)**

6 **MR. SOBOROFF:** This is from the son of one of the  
7 team members, he's eight years old and he's heard his parent  
8 talking because we're doing this all day and all night. So he  
9 gave to his parent, who gave to me this note.

10 Dear Veterans, thank you so much for fighting for our  
11 country. You are so brave. Thank you.

12 Judge, as you predicted, and so did all the people on  
13 the Weather Channel, the weather is turning now on homeless  
14 vets' health and their survivability. Anyone who wants to  
15 witness just walk as you have under freeway overpasses within a  
16 few miles of the campus. I was there yesterday.

17 And you know what, I went home to a warm bed and a  
18 meal. They didn't. Judge, if the site prep experts cannot  
19 access the temporary supportive housing sites within the next  
20 few days, on his nickel, did you say that?

21 **MR. SILBERFELD:** Yes.

22 **MR. SOBOROFF:** Okay. If the modular housing can't be  
23 ordered soon, your order cannot be met.

24 Judge Carter, we need your help. Randy and Kelly,  
25 please present our completed homework assignment.



1 Stand over here. You've got temporary, permanent,  
2 demolition. All right.

3 **MR. JOHNSON:** Initially, Judge, I think we're going  
4 to answer your direct question was related to the ground  
5 penetrating radar and what we need to do on those sites.

6 So we're trying to eliminate as many variables as  
7 possible so we can get a clean bid based on some preliminary  
8 sketches that Somas is doing. Typically you would do a full  
9 set of improvement plans, you know, for this which takes months  
10 and months and months.

11 So what they're doing is they know where the points  
12 of connections are and they're basically drawing, you know,  
13 lines with depths to it and specifying pipe sizes that we're  
14 going to need down there. There needs to be separation between  
15 potable water, and you know, sewage lines and everything. So  
16 we're trying to do it the right way.

17 We were told that once we get going, it takes  
18 approximately 70 working days and that's not including  
19 Saturdays, not including overtime, but it's -- you know, we  
20 need to get going.

21 And so in order to eliminate some of the variables,  
22 you know, for the subcontractors to give a decent bid we need  
23 to do the ground penetrating radar. All that is, it looks like  
24 a lawnmower, you know, that they run over the sites and it  
25 feeds the information as to what type of potential piping is

1 already underneath or whether you've got other stuff that's  
2 underneath.

3 **MR. SOBOROFF:** It's like an ultrasound right, Randy?

4 **MR. JOHNSON:** Yeah, yeah, think of it that way.

5 And then after that, based on what they find, they do  
6 potholing. And so Somas has got their own crews that can go  
7 out there and do that potholing and they're -- they would go  
8 ahead and fix whatever type of, you know, soil or, you know,  
9 that they're going to be taking out of there. But we need to  
10 get moving.

11 **THE COURT:** Just a moment.

12 CourtSmart's not working.

13 **(Pause)**

14 **THE COURT:** So wait just a moment and off the record.

15 **(Pause)**

16 **THE COURT:** Counsel, I'm concerned about the record  
17 with CourtSmart. What if it's cut off, what's the last thing  
18 you've got?

19 **THE CLERK:** When Mr. Johnson talked about like an  
20 ultrasound.

21 **THE COURT:** Ultrasound. So you can read a portion of  
22 that, to make certain. You were explaining ultrasound.

23 **MR. SOBOROFF:** You were at the lawnmower phase.

24 **MR. JOHNSON:** Oh, okay, all right, all right.

25 So the work itself I may be repeating myself since I

1 forgot what I said, but it's approximately 70 working days per  
2 site. So you could have four crews go in concurrently if you  
3 were to choose to do the Magenta B, then you go to site 7, you  
4 come back down to 4-A and then you go over to 5. That would --  
5 and that would buy you approximately 156 units --

6 **THE COURT:** Okay.

7 **MR. JOHNSON:** -- if you did all four.

8 **THE COURT:** Okay.

9 **MR. JOHNSON:** If you eliminated 4-A, you know, from  
10 that initially, then 106.

11 **THE COURT:** And I'm going to leave that to the two of  
12 you to rediscuss. My preference, not waiving any of your  
13 rights, but remember I only went to 4-A because you took 5 off  
14 the board.

15 **MR. JOHNSON:** Yeah, and we can chat about that later.  
16 There -- we're -- I think we're in sync with the first two  
17 sites, we're just not in sync afterwards.

18 All right. So the ground penetrating radar looks  
19 like a lawnmower and the lawnmower just goes up and down the  
20 site. It's not going to be damaging any property. All of  
21 these people doing the work, would all be insured to begin with  
22 and it had the requisite liability insurance that the VA would  
23 need.

24 The potholing is going to be something where you're  
25 actually -- where you have some issues, you're going to be

1 further potholing in there, bringing up samples, so you can see  
2 exactly what's there.

3 So all you're trying to do with all of this is  
4 eliminate variables. So that the contractor doesn't come back  
5 later and say gee, we weren't aware that we hit this, this and  
6 this and because of that, you know, it's going to cost you  
7 double, you know, some craziness like that.

8 Does that answer your question, Judge, as to why we  
9 need to get going on it?

10 **THE COURT:** Yes.

11 **MR. JOHNSON:** Okay. Would you like to hear the  
12 results of the homework assignment as far as the presentation?

13 **THE COURT:** Yes.

14 **MR. JOHNSON:** Okay. All right. So we asked the VA  
15 to share with us this schedule, which has been in court many  
16 times showing the location not only of the 233 units that have  
17 been complete, but in addition to that, the 400 units that  
18 under design or under construction right now, and then the  
19 final 400 that would take you up to 1,216 units.

20 So we said okay, we color coded each one of those --

21 **THE COURT:** Uh-huh.

22 **MR. JOHNSON:** -- you know, on this map so that you  
23 could see what's been done, what's in construction and what is  
24 scheduled to be done. So that's what the -- that map does.

25 Then if we were to go just a little to the next page,

1 all right and this one, it's -- can we make this a little  
2 bigger on the site plan so they can kind of see it?

3 Okay. All right. So for this work, we worked with  
4 Johnson Fain. Bill Fain has been working on the master plan  
5 for -- since the 2016 plan. They're familiar with a lot of  
6 these sites. And we've identified five different -- six  
7 different, seven different sites here and we've tried to put a  
8 priority to it.

9 So site 1 would be the first priority, site 2 would  
10 be the next priority, and the reason this is done is to answer  
11 Your Honor's request of where are the other 1,800 units, where  
12 could they potentially go.

13 So the first site that we have is a north -- in the  
14 north campus. It is located where the four existing buildings,  
15 you've got the two residential domiciliaries, then you've got  
16 the two administrative buildings there. And so that request,  
17 what we did is we said, if you keep the two domicilaries and  
18 you don't do anything with it, that 15 acre parcel becomes  
19 roughly 12 acres and then what could you do on the rest. If  
20 you did adaptive reuse for the two administrative office  
21 buildings what type of unit count and density could you get  
22 there.

23 So we calculated that on the next page and we did two  
24 different options there. The first option we came up with  
25 roughly 600 units that we could on that acreage and those are -

1 - Your Honor, those are four story buildings because the other  
2 building are all four story.

3 That would bring -- so that would be 600 units. And  
4 then if you took the position that the two buildings that are  
5 there right now in the -- for the admin, if those were to be --

6 **THE COURT:** You know, I need you to point so I'm  
7 certain.

8 **MR. JOHNSON:** Okay.

9 **THE COURT:** Why don't you come up here and just take  
10 this or point on the Elmo so we all know without any doubt what  
11 you're referring to.

12 **(Pause - parties conferring)**

13 **MR. JOHNSON:** These are all permanent supportive  
14 housing. Your Honor, can you see those four?

15 **THE COURT:** Yes.

16 **MR. JOHNSON:** So the two westerly are the  
17 domicilaries.

18 **THE COURT:** Give me the number on it so I have a  
19 record though, no reviewing Court is going to know what  
20 you're --

21 **MR. JOHNSON:** Okay. So 212 -- excuse me. 214 -- is  
22 that 17?

23 **MS. FARRELL:** 214, 217 of --

24 **MR. JOHNSON:** Yeah. Can you -- Your Honor, can you  
25 see those two?

1 UNIDENTIFIED: You can blow that up them.

2 MR. SOBOROFF: No, there are three there, there's

3 215 --

4 MR. JOHNSON: 14, 17.

5 THE COURT: Now no reviewing Court is going to know  
6 what you're referring to, you've thrown out four numbers now  
7 so.

8 MR. JOHNSON: 214 and 217 are the domicilaries.

9 THE COURT: Okay.

10 MR. JOHNSON: And then 215 and 218 -- 215 is the  
11 community living center. 218 is the admin building.

12 THE COURT: Okay.

13 MR. JOHNSON: And then 301 is the AFGU Union, do you  
14 see 301 in there?

15 THE COURT: Yes.

16 MR. JOHNSON: Okay. So all we said was, if you do  
17 adaptive reuse and you put four new buildings up, you could do  
18 approximately 600 units of permanent supportive housing  
19 units --

20 THE COURT: And point --

21 MR. JOHNSON: -- within those 12 acres.

22 THE COURT: And point to those buildings or locations  
23 for the 600 units.

24 MR. JOHNSON: All right. So draw -- we're going to  
25 have to draw L's.

1           **THE COURT:** Okay.

2           **MR. JOHNSON:** No, no, Steve, that's -- no, no, no.  
3 Here.

4           **MR. SOBOROFF:** Here's a fresh one.

5           **MR. JOHNSON:** Well, you're going to be drawing  
6 vertical north/south lines.

7           **MS. FARRELL:** There?

8           **MR. SOBOROFF:** Yeah, just draw.

9           **MS. FARRELL:** You don't need that one either.

10          **THE COURT:** So on site number 1, which is allegedly  
11 12.4 acres point to site number 1.

12          **MR. SOBOROFF:** It's circled there.

13          **THE COURT:** Good. Now, option 1, 600 DUS', buildings  
14 214 and 217 remain, point to those for just a minute.

15          **MR. JOHNSON:** Option 1, 2 -- they all stay and under  
16 option 1.

17          **THE COURT:** No, no, I'm going to go through your  
18 ledger because it's hard to read, it's small print.

19          **MR. JOHNSON:** Yes.

20          **THE COURT:** Option 1 it reads buildings 214 and 217  
21 remain as domiciliary buildings. Do you have the right  
22 buildings?

23          **MR. JOHNSON:** I'm sorry, Judge.

24          **THE COURT:** In other words, let's make sure, 214 and  
25 217 are domiciliary -- now I would go back to the other. This



1 is so hard to read, I would go right back to what you had  
2 before, because it's clear and it has the buildings marked.

3 **(Pause)**

4 **THE COURT:** All right. Folks, which are our  
5 domiciliary buildings for my record?

6 **MR. JOHNSON:** The domiciliary, Your Honor, the 214  
7 and 217.

8 **THE COURT:** Is that correct, Rob?

9 **MR. MERCHANT:** Yes, Your Honor, that's correct.

10 **THE COURT:** Okay. Let's make this easy. All right.  
11 Would you circle then 214 and 217 in some way, some form and  
12 maybe we need another exhibit up there to start clean.

13 Buildings 215 and 218 are retrofitted with a hundred DUs each.

14 So in some -- where's my 215 and 218? Now, are they  
15 to be retrofitted or would your recommendation that those two  
16 buildings be torn down? Now, remember last time Rob said we  
17 already have a master plan. Rob, can you help me? Were these  
18 buildings, 215 and 218 to be retrofitted or torn down?

19 **MR. MERCHANT:** Under our current master plan, Your  
20 Honor, these buildings are to remain in place.

21 **THE COURT:** Remain in place. So retrofitted.

22 **MR. MERCHANT:** With their current functions.

23 **THE COURT:** Refurbished, big word, okay. Now, do you  
24 disagree with that?

25 **MR. MERCHANT:** Your Honor, just to be clear, under

1 the current master plan 215 remains as a community living  
2 center or a skilled nursing facility and 218 remains an  
3 administrative building under the current master plan.

4 **THE COURT:** An administration building?

5 **MR. MERCHANT:** Yes.

6 **THE COURT:** But that's because before you were -- you  
7 had an EIR for 1,600 or 1,626 I forget.

8 **MR. MERCHANT:** That's correct.

9 **THE COURT:** And you were going to build out 1,200 and  
10 I put additional stress on you frankly. So those from your  
11 perspective would not be administrative buildings, they would  
12 be housing.

13 **MR. JOHNSON:** Correct.

14 **THE COURT:** Now, there's been a recent move in the  
15 federal government to move a lot of -- let's say government  
16 workers off site working from home. I don't know how that  
17 interplays, but we know the most valuable resource we have  
18 right now is land. So that we won't have a disagreement, 215,  
19 218 administrative.

20 **MR. MERCHANT:** Your Honor, building 215 is a  
21 community living center or a skilled nursing facility. This  
22 is -- currently serves as a residence for 93 veterans --

23 **THE COURT:** Currently.

24 **MR. MERCHANT:** -- and additional clinical services  
25 that go along with that to include a dental clinic in the

1 building.

2 **THE COURT:** And so we can't count that towards --

3 **MR. MERCHANT:** And then nutrition and food service.

4 **THE COURT:** -- the 1,800.

5 **MR. MERCHANT:** No, these are clinical beds.

6 **THE COURT:** Okay. 215 -- I'm sorry, 218,

7 administrative?

8 **MR. MERCHANT:** 218 is currently an administrative

9 building --

10 **THE COURT:** Okay.

11 **MR. MERCHANT:** -- that houses about 200 full time

12 employees.

13 **THE COURT:** Okay. Then it goes on to state four new  
14 in field buildings added to site 100. Show me where those four  
15 in field buildings would be.

16 Remember, I'm not intruding or making orders on this  
17 at all, I'm trying to get educated so in case in the future I  
18 am in that position, I want to be able to make the best  
19 possible orders for both sides.

20 **MR. JOHNSON:** All right. There would be four  
21 north/south buildings, two here --

22 **THE COURT:** Show me where.

23 **MR. JOHNSON:** -- one here, one here.

24 And then to the -- then over here, there's to be  
25 one -- yeah, on the other side.

1           **THE COURT:** So in other words, you'd be putting on in  
2 a sense new wings?

3           **MR. JOHNSON:** Your Honor, there's 12 acres here.

4           **THE COURT:** Yeah, I know that, but that's not my  
5 question.

6           **MR. JOHNSON:** All right.

7           **THE COURT:** You'd be putting on new wings.

8           **MR. JOHNSON:** Yes.

9           **THE COURT:** Would they connect with 214 and 217?

10          **MR. JOHNSON:** If we desired them to we could, but  
11 they don't have to.

12          **THE COURT:** So right now it doesn't matter.

13          **MR. JOHNSON:** Yeah.

14          **THE COURT:** Okay. Now, if you took away 215 and 218  
15 because they're presently occupied for either administrative  
16 or -- and I'm sorry I forgot, Rob, the terminology.

17          **MR. MERCHANT:** It's called a community living center,  
18 which is a skilled nursing facility.

19          **THE COURT:** Community living center. If you took  
20 away those two, now what would your --

21          **MR. JOHNSON:** You'd be down 200 units.

22          **THE COURT:** So you'd have 400?

23          **MR. JOHNSON:** Yeah.

24          **THE COURT:** All right. Just a moment.  
25 Does that assume though four stories?

1           **MR. JOHNSON:** It does, because they are four stories.

2           **THE COURT:** Now, are there present building four  
3 stories?

4           **MR. JOHNSON:** Yes.

5           **THE COURT:** Rob, are they four stories?

6           **MR. MERCHANT:** That's correct, Your Honor.

7           **THE COURT:** Okay. Let's just say hypothetically 400,  
8 point to site number 2.

9           **MR. JOHNSON:** Okay.

10           **THE COURT:** On site number 2 we have, for the record,  
11 84 -- well, we have building 415, 414, 413. Are those  
12 buildings occupied at the present time, Rob?

13           **MR. MERCHANT:** Yes, Your Honor, this is our research  
14 complex where we conduct all of our research activities,  
15 including our wet labs.

16           **THE COURT:** So would those research buildings need to  
17 remain in your opinion on the master plan or would they be  
18 moved to the hospital and the new tower?

19           **MR. MERCHANT:** So currently we are working to replace  
20 these buildings --

21           **THE COURT:** I see.

22           **MR. MERCHANT:** -- with a new consolidated research  
23 facility that would be located on the south campus, adjacent to  
24 the hospital building.

25           **THE COURT:** Okay.

1           **MR. MERCHANT:** The current plan has been scoped from  
2 an estimated 250,000 square foot facility to 120,000 square  
3 foot facility so that we can get the costs down to something  
4 that's affordable.

5           The plan has been that when that new facility opens,  
6 we would vacate these buildings. They would be then turned  
7 over for development as housing. That's in the current version  
8 of the master plan and these units are contemplated within the  
9 1,600 but above the 1,200 line.

10           **THE COURT:** 1,200, okay.

11           **MR. MERCHANT:** They're in that delta between 1,200  
12 and 1,600.

13           **THE COURT:** I want to repeat that back to you so you  
14 know what I'm absorbing. Although the research entities at the  
15 present time eventually we hope to move that to the south  
16 campus --

17           **MR. MERCHANT:** That's correct.

18           **THE COURT:** -- in some form. And it would be  
19 critical that we sequence these in so that we don't disturb the  
20 research facility presently in place and, Judge, you shouldn't  
21 be giving any kind of direction literally, but if you did, you  
22 certainly wouldn't want to give any direction concerning these  
23 sites because we could sequence them in before 2030. Because  
24 we start our construction in 2025 on the hospital, on the  
25 tower, and so if the plaintiffs have a judgment from the Court

1 of 1,800, you know, permanent supportive housing, we could keep  
2 these for the present time, we could sequence them into the  
3 hospital, eventually we'd plan these for housing anyway.

4 **MR. MERCHANT:** That is the current plan. And just a  
5 couple of clarifications. The construction of the hospital is  
6 dependent on an appropriation from Congress --

7 **THE COURT:** Right.

8 **MR. MERCHANT:** -- which is in the budget for this  
9 year, but which we do not have yet. And the development of the  
10 new research building is still in that development phase.

11 **THE COURT:** Still, I know.

12 **MR. MERCHANT:** We finished the requirements on the  
13 rescoped building.

14 **THE COURT:** And overall I understand so you know that  
15 I understand is you'd like to keep the south campus in what I'm  
16 going to call a medical modulam, for want of a better word.

17 **MR. MERCHANT:** That's correct.

18 **THE COURT:** And that's why I was a little surprised  
19 frankly that all of you folks took 5 off my list, because that  
20 then forced me back into 4-A. If I had my preference, I'd go  
21 right back to 5 and I would delay 4-A quite frankly trying to  
22 see where we end up and if that's a necessity. Okay? And it  
23 may not be, it depends upon what happens to the stadium with  
24 UCLA eventually and it depends upon certainly parcel 9, all  
25 right, Brentwood, wake up back there, parcel 9 because that's

1 another four acres and it depends upon Barrington Plaza.

2 In other words, you may have the ability to get there  
3 and keeping south campus pristine, but if you folks on both  
4 sides keep telling me you don't have property, then you leave  
5 me no option except to start looking for property and that's  
6 obviously going to be Brentwood parcel 9 by the baseball field  
7 and UCLA stadium. Okay? All right.

8 **MR. SOBOROFF:** That was our homework and that's what  
9 we're answering to.

10 **THE COURT:** No, you're doing great so far. Now --

11 **MR. SOBOROFF:** But on the specific --

12 **THE COURT:** -- we can have a disagreement, but how  
13 many units are we going to be able to put into what -- are  
14 these going to be torn down?

15 **MR. JOHNSON:** No, this is -- you can keep 214, 17,  
16 18, 15 and easily get 400 units on that site.

17 **THE COURT:** Yeah, but are these going to be torn down  
18 and rebuilt or are these going to be rehabbed?

19 **MR. JOHNSON:** The -- you could keep it in place  
20 period, the domicilaries and the other two buildings.

21 **THE COURT:** Now I'm going to say it again so I  
22 understand it. I want you to look at -- if you quit moving  
23 that around, I'd appreciate it. And if you bring that back,  
24 now stop. If you go to 415, 414, 413, simple answer, your  
25 thought, are these some of the buildings that you initially



1 came in and said, Judge, we should demolish these and build new  
2 or are these some buildings that we could rehab?

3 **MR. JOHNSON:** Those buildings I would demolish.

4 **THE COURT:** Now hold on. Rob, what's the master  
5 plan?

6 **MR. MERCHANT:** Demolish.

7 **THE COURT:** Okay. Then if we all agree with that  
8 here you have three stories. Why aren't we going four stories?

9 **MR. JOHNSON:** Your order. I mean you basically  
10 said --

11 **THE COURT:** Well, let's just say that I just reversed  
12 that order, because every time I can get educated I need to be  
13 flexible. So let's go back to it.

14 **MR. JOHNSON:** So if the acreage of 9.8, let's call it  
15 10 for the moment, we could get 800 units there easy.

16 **THE COURT:** Okay. And so if you went four stories it  
17 would alleviate a lot of --

18 **MR. JOHNSON:** That's four stories, four stories.

19 **THE COURT:** -- pressure. You would move from 580 to  
20 how many?

21 **MR. JOHNSON:** 800.

22 **THE COURT:** Now, Rob, is that reasonable or  
23 unreasonable? Are there -- in other words, if I said to begin  
24 with, look, I'm getting educated along the way and initially I  
25 thought that everything there was three stories, but I was just

1 wrong, that we could go four stories. Is the number  
2 approximately 800 a reasonable number for that area or should  
3 it be lower?

4 **MR. MERCHANT:** I don't know off the top of my head.

5 **THE COURT:** Okay.

6 **MR. MERCHANT:** I think we would also need to review  
7 what was contemplated --

8 **THE COURT:** Okay.

9 **MR. MERCHANT:** -- in the environmental statement as  
10 well.

11 **THE COURT:** I'm just going to put down a range of 480  
12 at three stories, but I'm telling you if I said three stories  
13 to begin with, I need education along the way and I need to be  
14 flexible. So let's just assume four stories, you might be able  
15 to go as high as 800?

16 **MR. JOHNSON:** Yes.

17 **THE COURT:** In that unit.

18 **MR. JOHNSON:** Just so we get our scoring straight --

19 **THE COURT:** So we lost 200, we gained 220.

20 **MR. JOHNSON:** So we had the 1,216 --

21 **THE COURT:** Now let me say it again. We lost from  
22 600 down to 400 if we keep the administrative building.

23 **MR. JOHNSON:** Yes.

24 **THE COURT:** Et cetera in site 1, we lost 200, went  
25 from 600 to 400, but we gained back hypothetically in site

1 number 2 about 220, we went from 580 to 800, right? So we're  
2 right on track, we're about 1,200 units between the two?

3 **MR. JOHNSON:** Yeah.

4 **THE COURT:** Okay. Go to site 3.

5 **MR. SOBOROFF:** Judge, two more points on site 2.

6 The VA has said that they would move it to the south  
7 campus, but I don't believe that that's funded. And if it's  
8 not funded, then are we talking about 10 years from now, 15  
9 years from now? And so I offer an alternative that may be  
10 wrong or may be right. But UCLA just purchased the west side  
11 pavilion for \$700 million.

12 **THE COURT:** I'm aware but I'm also aware of the Palis  
13 Verde property.

14 **MR. SOBOROFF:** Okay. And Google paid off the lease  
15 and all the razmataz.

16 **THE COURT:** Well, just a moment, they've got 32 acres  
17 of Palos Verdes property that they've been sitting on since  
18 1978 --

19 **MR. SOBOROFF:** Okay. But west side --

20 **THE COURT:** -- 1980.

21 **MR. SOBOROFF:** -- pavilion is right -- it's a few  
22 blocks away. They're just starting to program that for these  
23 exact same uses. Why not consider, the building is built, a  
24 lot of the improvements are made, but why not consider moving  
25 those three, the uses in those buildings into -- since it's

1 research, a lot of UCLA research, why not move them there and  
2 get it done faster?

3           **THE COURT:** I continually wish that UCLA was here.  
4 Because this conversation could go no place with these thoughts  
5 and ideas and what I'm worried about is, that UCLA will believe  
6 that suddenly in May or June or July, if in fact, there's not  
7 an acceptable agreement between the VA, UCLA and the veterans  
8 that they'll find on July 4th that field cordoned off again and  
9 they'll come to me with an emergency writ saying, Judge, that's  
10 not fair.

11           Well right now, I've given them the courtesy because  
12 they've doubled the rent and you've stated from the plaintiffs,  
13 that you can't use it before July 4th to use that park. I'm  
14 afraid that's going to put everybody into a lulling position  
15 and the message is going to be, don't worry, it's off the board  
16 temporarily so we're not down to serious negotiations on both  
17 sides.

18           Now let's stop there for a moment. It could work  
19 very easily this way. One of my problems with UCLA, and you  
20 can convey it to them, is I was worried about tearing down a  
21 stadium. When Brad made his opening statement, he said, Judge  
22 Carter, it's going to cost the VA money that we don't have if  
23 we have to deconstruct, and those weren't your exact word,  
24 deconstruct, but tear down the stadium.

25           So I've constantly been worried about using money to

1 tear down something, rather than using money that the VA -- to  
2 build something. Well, wait a minute. Look at that aerial  
3 diagram over there. It's minimal cost to turn down the back  
4 wall of the UCLA stadium, go out and look at it. It costs  
5 money to tear down the concrete. What happens if the back wall  
6 was torn down which would then open up over 7 acres, it would  
7 be contiguous to Magenta B, it would be contiguous to parcel 7,  
8 you could put modular homes there because it's already flat.  
9 All you've got to do is bulldoze the mound and it runs together  
10 with all of the utilities we're trying to get in at the present  
11 time with Magenta B and parcel 7 and it creates a continual  
12 flow of modular homes.

13 **MR. JOHNSON:** That's part of this presentation.

14 **THE COURT:** Now hold on. This is -- I haven't heard  
15 the rest of it. So I've been thinking if we ever get to the  
16 point that this stadium, you know, is the next option and then  
17 how are we not wasting money? And it may be that the back wall  
18 comes down, but there's no deconstruction of the cement because  
19 it takes a lot of money, you've already got a flat surface,  
20 you've got 7 acres, you've got the utilities on both sides from  
21 Magenta B and parcel 7. Why not knock down that back wall and  
22 give us 7 more acres?

23 Now, we haven't even talked about that one yet and I  
24 don't want them walking into a trap. We've got 4, 4 and a half  
25 acres, it was Skip, remember, walked and said a couple of

1 things, Judge, why do we -- we want to preserve the core, I  
2 think we're all in agreement with that. But depending upon  
3 what counsel says in a few moments from Brentwood, they could  
4 be right on the block. They're going to have a tough choice to  
5 make in a moment.

6 Eventually there's a good chance they're going to  
7 lose parcel 9. I don't know when, but there's a good chance.  
8 There's a good chance they're going to lose that baseball  
9 field. When, I don't know, but if the VA maintains the  
10 position that we don't have enough or we can't build enough,  
11 then we're not ignoring Brentwood and we're not ignoring UCLA.

12 I'd like to preserve the facilities, but unless we  
13 reach an agreement, back on the line. We'll know in a few  
14 moments from Brentwood what they want to do.

15 Okay. Now, you keep going, Mr. Johnson.

16 **MR. JOHNSON:** Okay. So now we're to the point --

17 **THE COURT:** Site 3.

18 **MR. JOHNSON:** What's that?

19 **THE COURT:** That's Barrington Plaza, right?

20 **MR. JOHNSON:** Site 3, correct.

21 **THE COURT:** Barrington Park.

22 **MR. JOHNSON:** Barrington Park it's all of it, other  
23 than the north parking lot.

24 **THE COURT:** All right. Now, before you use all of it  
25 there's a post office, in other words, I'm the devil's

1 advocate, just assume --

2 **MR. JOHNSON:** Right.

3 **THE COURT:** -- that I'm naïve, you're educating me,  
4 but I'm going to push back and say, well, why are we destroying  
5 a parking lot which gives us a setback just to the south of the  
6 post office. In other words, we have two parking lots, don't  
7 we?

8 **MR. JOHNSON:** Right.

9 **THE COURT:** That parking lot is about an acre and a  
10 half. So once again we're into a deconstruction or whatever of  
11 that parking lot. But if we have that parking lot and it  
12 provides all of the parking that we need for whatever we're  
13 going to build. And I love dogs but that dog park is too  
14 large. An acre and a half for dogs, no. Human beings are just  
15 as important if not more so.

16 So this dog park is ridiculously large, just go walk  
17 through it. We can get a half-acre or an acre back from that  
18 dog park. We can give you the rest of -- get rid of those two  
19 baseball diamonds that are not used by the way, and by the way,  
20 if you don't believe me, just go out there and sit around on a  
21 Saturday or Sunday for a couple of hours. Folks, those are not  
22 being used. And number two, you couldn't use them if you  
23 wanted to without breaking your leg, they're full of holes.

24 So if we left that parking lot, if we just cut it off  
25 right about here, see it? And we took the Barrington Plaza,

1 then why are we ignoring this? For the good citizens of  
2 Brentwood?

3 **MR. SILBERFELD:** That's not VA property actually.

4 **THE COURT:** In other words, I'm going to come back to  
5 you and say I want something built or hypothetically would like  
6 something built because you're my experts on that area north  
7 and I like this parking lot down here that's already existing  
8 to service this and that.

9 Now that's hypothetically, you're my experts. Or if  
10 you want, I guess we could take this parking lot up here, if  
11 all of you agree and we could take this entire area, you're the  
12 experts, I don't care, but either way we come up with the same  
13 amount of acreage.

14 So let's just assume that we haven't made a decision  
15 between you and the VA and let's just assume that we've got  
16 about 9.5 acres between the two or on one if you get rid of the  
17 parking lot and you tell me with three stories you can give me  
18 570 units.

19 **MR. JOHNSON:** Yes.

20 **THE COURT:** If you built four stories, if you took  
21 the pressure off, what could you give me?

22 **MR. JOHNSON:** 80 times nine and a half is --

23 **THE COURT:** In other words, I'm learning as I go  
24 also.

25 **MR. JOHNSON:** Yeah.



1           **THE COURT:** So let's just assume what I thought to  
2 begin with is a three story limitation, I was wrong. Four  
3 stories, what could you give me?

4           **MR. JOHNSON:** 760.

5           **THE COURT:** It sure takes a lot of pressure off of  
6 everybody if it's 750. Okay?

7           **MR. SOBOROFF:** Judge, you could also integrate -- let  
8 me speak on behalf of dogs, you could integrate a dog park  
9 around -- on a portion of the perimeter that wouldn't affect  
10 the amount of units you could put up --

11           **THE COURT:** No, no. The dog park is going to work  
12 out.

13           **MR. SOBOROFF:** Yeah, right, that's all I'm saying.

14           **THE COURT:** It's the size of the dog park that  
15 concerns me --

16           **MR. SOBOROFF:** And location.

17           **THE COURT:** -- an acre and a half, it's wasted land.  
18 We don't need that kind of land. We need it for human beings.

19           **MR. SOBOROFF:** Okay.

20           **THE COURT:** So they're going to have a dog park, I  
21 get it. And that way all the folks right across the street can  
22 use it as they are now apparently. Have you seen that yet?  
23 Veterans aren't using that. Citizens are using it. This is  
24 veterans property.

25           **MR. JOHNSON:** Judge, you're over 3,000 units at that

1 point.

2 **THE COURT:** Well, 400, 800, and 750. We're almost  
3 there. We're 1,550. Just a moment, 400 on site 1, add -- oh,  
4 no, you're absolutely right, add 800 if we go four stories now,  
5 four stories, add on site 3 750, my math, you're right, 1,950  
6 we're done.

7 **MR. JOHNSON:** We're done.

8 **THE COURT:** In fact we're over.

9 **MR. JOHNSON:** That's right.

10 **THE COURT:** Well, now let's rate the parade of  
11 horrors here comes Barbara and she says we've got methane.  
12 So let's take a look at our circles, where that's chart. And  
13 those circles indicate methane, okay. That's one parade of  
14 horrible. We need to get some monitors out there on Barrington  
15 Park and look at it right away.

16 **MR. JOHNSON:** Yeah, that's not -- it doesn't mean you  
17 can't develop it forever --

18 **THE COURT:** No, but I don't want --

19 **MR. JOHNSON:** -- it just means you've got to  
20 mitigate.

21 **THE COURT:** Well why don't you get some monitors in  
22 there now so we don't have the problem before we ever start  
23 that we ran into with 401?

24 **MR. JOHNSON:** I think, Chelsea, you have done  
25 something to that effect, haven't you?

1           **THE COURT:** Chelsea, do you know?

2           **MS. BLACK:** Yes, sir. We have different actions that  
3 we're taking for compliance with the landfill and one of those  
4 is perimeter monitoring around the actual arroyo.

5           **THE COURT:** Okay.

6           **MS. BLACK:** So that's what we're doing right now.

7           **THE COURT:** Okay. Up in Barrington, up in that park?

8           **MS. BLACK:** Not up in Barrington. We're actually  
9 putting it around the landfill perimeters. That was per LAHA.

10          **THE COURT:** So if they came back, Chelsea, you see  
11 the circle covers part of that park.

12          **MS. BLACK:** Correct.

13          **THE COURT:** Would these monitors that you're putting  
14 around the landfill cure the problem so Barbara Ferrer doesn't  
15 send you a letter?

16          **MS. BLACK:** What is going to cure the issue of -- for  
17 the LAHA is for us to submit our post closure land use plan and  
18 we're taking actions to do that --

19          **THE COURT:** Okay.

20          **MS. BLACK:** -- sampling and that work to ultimately  
21 put that plan together, submit it to LAHA, they review it, and  
22 approve it. That will take a -- you know, months to do, but  
23 we're taking actions to do that.

24          **THE COURT:** Okay. And on the front side, once again,  
25 would cure that problem that we ran into hopefully with the

1 county sending you a letter.

2 **MS. BLACK:** So the post closure plan will ultimately  
3 once approved allow us from what we understand to do further  
4 new construction in those -- you know, within the property  
5 within that thousand feet.

6 I do want to clarify that the northern portion of the  
7 Barrington Park is outside of the thousand feet, so I think  
8 we've identified it as area E.

9 **THE COURT:** No, Chelsea, it cuts halfway through.  
10 Could one of you -- could one of the law clerks or somebody  
11 bring this chart down? I have to do this from memory, but take  
12 a look, bring it over closer so she can see it.

13 One of these circles cuts right through that park.  
14 Okay. That's what I'm worried about, that we get a last  
15 moment, you know, letter after we've put this kind of effort  
16 in.

17 **MS. BLACK:** Correct. The northern parking lot is  
18 outside of the thousand feet.

19 **THE COURT:** Exactly. The northern parking lot is  
20 fine.

21 **MS. BLACK:** That's fine. The other areas are still  
22 incumbered by the landfill issue.

23 **THE COURT:** I just want to talk about that southern  
24 area of the park, with the two baseball fields on it.

25 **MS. BLACK:** Uh-huh.

1           **THE COURT:** I just want to talk about that.

2           That radius cuts right through that property. With  
3 the monitors that you put up in your opinion cure that problem,  
4 putting up at the edge of the landfill or does something else  
5 need to be done?

6           **MS. BLACK:** No, the monitors that we're putting up  
7 satisfies one of the areas of compliance with ALA (ph).

8           **THE COURT:** Make it simple, how do I get all that  
9 park? How do we get all that park ready for development  
10 without having a concern from Barbara Ferrer?

11           **MS. BLACK:** It's when we submit our post closure land  
12 use plan.

13           **THE COURT:** And to submit that plan, do you have to  
14 do some kind of monitoring?

15           **MS. BLACK:** There's going to be a lot of sampling, a  
16 lot of monitoring, there's a lot of investigations that go  
17 along with it.

18           **THE COURT:** You have to do that on the park itself,  
19 don't you?

20           **MS. BLACK:** Throughout the area. It'll be with  
21 the --

22           **THE COURT:** I'm sorry, I'm going to be specific.

23           **MS. BLACK:** Okay.

24           **THE COURT:** Counsel, I'm going to order this, not ask  
25 it anymore, move that over to Chelsea so she can see it.

1           Now, I want you to look at these circles again and  
2 just really a simple question, I just want to know what has to  
3 be done so we get no push back from the county. And you know,  
4 you may sequence this in in 2029, do you see what I mean? It  
5 may get sequenced in earlier. I mean, that's eventually going  
6 to be your choice. How do we get a guarantee that we don't run  
7 into those problems that you faced, Chelsea, when you took the  
8 stand?

9           **MS. BLACK:** Ultimately again with the post closure  
10 land use plan, once we submit that to the county, which we  
11 anticipate doing by December of 2025 --

12           **THE COURT:** Okay.

13           **MS. BLACK:** -- that plan will be with ALA for review  
14 and approval. And that should satisfy their concerns and allow  
15 us to continue construction within the yellow and continue on  
16 with new construction.

17           **THE COURT:** Okay. Fair enough.

18           **MS. BLACK:** Subject to their approval.

19           **THE COURT:** And you'd be -- and you might be  
20 relatively confident then going forward, if you have the  
21 funding, if you have the appropriation, and sequencing this in  
22 in the future, whatever years those were.

23           **MS. BLACK:** We hope to again satisfy the ALA, the  
24 county, to continue construction under our current master  
25 plan --

1           **THE COURT:** Okay. Fair enough.

2           **MS. BLACK:** -- for those areas that are affected.

3           **THE COURT:** Okay. Let's take the next one then, site  
4 4, I want to come right back to the Jackie Robinson Stadium  
5 because this doesn't make sense to me and I'm going to push  
6 back on you. Bring that up. I want to see it.

7           All right. Could somebody put up some kind of  
8 picture from all of our exhibits on the Elmo of Jackie Robinson  
9 Stadium or a portion thereof, and if not, I've got some here.

10           **MR. SOBOROFF:** Are you talking about the site lay  
11 out, Judge, with the temporary units?

12           **THE COURT:** Oh, I don't -- here. Karlen, would you  
13 give this to them.

14           Yeah, just put it up on the Elmo for us, Karlen,  
15 thank you.

16           Now you can work off of this diagram or you can work  
17 off what I'm going to put up. And I want the -- I want you  
18 folks to continually invite UCLA to be here. I don't want to  
19 have a discussion, I don't want to reach any decision, but you  
20 represented to me that we were going to use this stadium until  
21 after July 5th or July 4th. So I've got a wasting asset.

22           I know that from your perspective it's grossly  
23 undervalued at \$600,000. But when I was looking at this last  
24 evening this didn't make sense to me because it says a new four  
25 story building wrapped around the outfield of Jackie Robinson

1 Stadium. I'm hoping that the VA works with us on this and I'm  
2 hoping for a hundred some modular unit on Magenta B and you can  
3 point to it, no, no -- okay, good. Point to Magenta B so we  
4 all see Magenta B, it's the parking lot. Point to it.

5 No. Move your finger. It's the gray area.

6 **MR. SOBOROFF:** You're talking about this area?

7 **THE COURT:** No. The parking lot right near Barranca  
8 Field, point to it.

9 **MR. SOBOROFF:** This is -- that's site B.

10 **THE COURT:** Yeah, okay. There we go. This whole  
11 area. My apologies.

12 **MR. SOBOROFF:** Yes, sir.

13 **THE COURT:** All right. Now hold on. We can work  
14 together. I want to assume for the moment and plan for the  
15 worst that you -- all of you between the VA and UCLA cannot  
16 reach an agreement.

17 I've been consistently worried about expending money  
18 to tear down things, let me repeat that like a broken record,  
19 because when Brad came in his first opening statement was,  
20 Judge, with UCLA, it's going to cost the VA too much money to  
21 tear down an existing structure.

22 So I've been thinking about that for weeks about why  
23 I would spend money and what I'm going to call concrete, but  
24 there's absolutely no reason not to tear down that back fence.  
25 That is a minimal cost.



1           There is no reason if you can't reach an agreement  
2 that come July 4th, subject to all the emergency writs that are  
3 going to go up there, that we're not tied together site 7 and  
4 site B because we already know subject to ground radar, you've  
5 already told me we've got excellent sewage, we've got excellent  
6 lighting, it's all in place, then why aren't we taking  
7 advantage, without tearing down concrete because it's too  
8 costly, and if housing is our best use of this land, why are we  
9 not knocking down that back fence and moving right into that  
10 stadium and putting modular housing in there just to match the  
11 modular housing on site 7 and Barranca Field?

12           **MR. SOBOROFF:** That's a definite option.

13           **THE COURT:** Because we've already got modular housing  
14 going in. What you're telling me is if you could build four  
15 stories around the stadium. Now, let's just say UCLA came back  
16 to us for a moment. Let's just say UCLA said, you know what,  
17 Judge, and veterans and VA, we like the idea of veterans  
18 housing, we're going to put in veteran housing, we're going to  
19 help you financially over here at UCLA because UCLA is short of  
20 housing anyway, they say they've got thousands of veterans over  
21 at UCLA that they're trying to help, maybe.

22           What happens if they came back and gave the VA some  
23 money because they needed housing anyway, then that might be an  
24 option on the board if they wanted to save their stadium, going  
25 four stories high and then you're telling me on site number 4

1 which is the stadium we'd have 200 units, right?

2 **MR. SOBOROFF:** Uh-huh.

3 **THE COURT:** Now, I want to take plan B. Let's say  
4 that doesn't work and let's say that I made an order come July  
5 5th that that back wall was to be torn down. But that I wanted  
6 to match the singular modular homes on that site. I wanted to  
7 tie in Magenta B and I wanted to tie in Parcel 7, now I want  
8 you to tell me what that acreage is and I want you to tell me  
9 how many modular homes there, because we know we've already got  
10 our sewer in for both lots surrounding it, I mean it flows  
11 contiguously, how many units of modular housing could I put in  
12 there?

13 **MR. JOHNSON:** Well, you're basically taking the  
14 entire UCLA --

15 **THE COURT:** No, you two have a conversation. Don't  
16 tattle for a moment. Just tell me after you two talk. Go over  
17 and talk to Chelsea, if you want or Rob and give me your best  
18 estimate.

19 This is assuming the worst, let's assume you can't  
20 reach an agreement.

21 **MR. JOHNSON:** 150 units.

22 **THE COURT:** Okay. Now hold on. We've got 106  
23 approximately plus 150, we now have 256 modular units which  
24 we're going to call temporary for a moment to help the VA  
25 purchase, because they were able to purchase tiny homes, and

1 you've already given me in site number 1, 2 and 3, 1,950  
2 permanent homes.

3 In other words, what I'm saying, Rob, to you is we  
4 may never even have to get near the south campus. But if you  
5 take away 5 from me, you've left me no place to go except 4-A  
6 because I'm trying to get the paved parking lots first.

7 And if you continue to maintain the position that you  
8 don't have enough land in the opening statement which you  
9 weren't part of, frankly that's ridiculous. We've got plenty  
10 of land out there.

11 We're almost done. We haven't even talked about 5,  
12 224 and 222, we haven't even talked about 6, 220. And we  
13 haven't even talked about 1.9. We've got plenty of land,  
14 folks. In other words, all of you could have it your own way,  
15 you never need to touch south campus possibly. I just have to  
16 move from 3 to 4 and not tie you in.

17 And number two, I was a little surprised, I saw your  
18 judgment that said 750 with adamancy. I've made a record a  
19 number of times, although it's not in the judgment that it  
20 should be up to 750. The 1,800 I'm adamant about concerning  
21 permanent supportive housing, you take that up on appeal.

22 **UNIDENTIFIED:** Yeah.

23 **THE COURT:** But with 750 I've been very clear to all  
24 of you folks that I was willing to work sequentially with you  
25 and that's why I was surprised by the papers, Brad, that you

1 wrote saying 750. I see that technically in the judgment.  
2 That was not intended, it was to be up to 750. I looked back  
3 through the transcript and I've said that a number of times.  
4 Okay?

5 All right. So we're almost done, we've got the land.

6 **MR. JOHNSON:** Your Honor, the one site that I would  
7 point you to that is adjacent to Brentwood Glen where you --  
8 and that is ripe for temporary housing.

9 **THE COURT:** Point it to me, point it out.

10 Well, yeah. Point it to me.

11 **UNIDENTIFIED:** Site 8, Your Honor.

12 **MR. SOBOROFF:** We're basically -- it's all 7-A and 8.

13 **THE COURT:** Site 8?

14 **MR. JOHNSON:** 7-A and 8, yes, there you go.

15 **THE COURT:** Well, in other words, you've got all the  
16 flexibility in the world. Let's just say that we were actually  
17 going to 750, what I'm trying to do is tie in the temporary  
18 housing in one contiguous place. Now, I'm hoping UCLA settles,  
19 I'm hoping that the veterans accept something, I'm hoping that  
20 whatever, but if not, what I've given is, I've given UCLA  
21 enough time now so that they can't complain that this was a  
22 surprise, that the Judge suddenly cordoned it off which is  
23 unfair from their perspective. They've doubled the rent in the  
24 meantime, which I recognize is too little from your  
25 perspective, and I'm not finding that that's adequate, or

1 principally for the benefit of the veterans.

2           They have to have a contingency plan at some point  
3 because after the prior case, they were up on appeal so they  
4 must have been planning to move to LMU or some place. They've  
5 got Palos Verdes out there, in other words, there's no surprise  
6 coming July 4th.

7           And all I'm saying is, that I don't want anybody to  
8 argue surprise and for that, I order that the back wall of that  
9 stadium be torn down because that's the most logical economic  
10 place to go and we're able to tie in modular housing that  
11 sweeps apart from Magenta B up to that stadium without  
12 destroying and using up the funding, tearing down concrete,  
13 right over to parcel 7. And I've got 256 units there already.  
14 For goodness sakes, folks, that may be enough, maybe we've over  
15 calculated on the 750. Maybe we never get there with some  
16 flexibility.

17           But one thing I'm adamant about, you've got to give  
18 me that hundred units, okay. And I'm going to ask you to go  
19 back and make a phone call to that decision-maker, otherwise I  
20 think Brad's right, we're going to find yourselves in a  
21 position potentially if they deny your administrative request  
22 and when you don't obey on the 13th, and we'll see you in a  
23 contempt hearing. I'm not threatening you. I just don't want  
24 to get there, but that's a real possibility.

25           Okay. So I expect that this is going to get funded

1 on the 12th for these hundred. I'm hoping so.

2 **MR. JOHNSON:** Judge, again, we need to get out there.

3 **THE COURT:** Okay. Do you want to go out there today?

4 **MR. MERCHANT:** Yeah.

5 **THE COURT:** Good, let's go.

6 **UNIDENTIFIED:** No, no, no, no.

7 **THE COURT:** I want to hear from Brentwood real quick  
8 and we can plow on about this.

9 **MR. JOHNSON:** Judge, what I meant was we need to get  
10 moving --

11 **THE COURT:** Oh, time out, let's go out there.

12 **MR. JOHNSON:** -- on these studies.

13 **THE COURT:** They could tell you that you can't go  
14 there, but I can go there and you can go with me.

15 Now, Brad's going to object to that.

16 **MR. ROSENBERG:** I was just -- this is Brad Rosenberg.  
17 I was just going to say we haven't an opportunity to respond to  
18 any of this in court yet, so we'd planned to go out there this  
19 afternoon.

20 **THE COURT:** We're going out there.

21 **MR. ROSENBERG:** But there are a few things that we  
22 need to clarify.

23 **THE COURT:** Okay. Now, number two, where's Soless  
24 (ph), where's our usual VA representative? By the way, folks,  
25 unfortunately for all of you I am very aware of ground

1 penetrating radar. What you don't know if I have a  
2 receivership over all the facilities and site plan. We put on  
3 \$350 million, we've been horizontal drilling, we've even had to  
4 worry about Japanese deceased and marines that we've had to  
5 care for, okay. So I'm a little aware of what you're talking  
6 about.

7 Ground penetrating radar, no problem. It is simple.  
8 You don't even have to violate the integrity of this. So how  
9 do we get Somas out there?

10 **MR. JOHNSON:** Well, Somas we put a call into Dave  
11 Curtis, we can do that right now.

12 **THE COURT:** Well, tell him to get out there.

13 All right. Now, Brad, object to it. Make your  
14 record, come up and object so we get this right away.

15 **MR. SOBOROFF:** Do you want to hear from Dr. Sharon on  
16 number 5 or no?

17 **THE COURT:** Yeah, let me talk to Dr. Sharon for just  
18 a moment. Brad, my apologies.

19 Dr. Sharon, there's another thing I'm concerned  
20 about, about your testimony that I really took to heart. One  
21 of the things I don't think that we're recognizing as the VA  
22 has argued, look, our numbers are decreasing. What they  
23 haven't stated is the suicide rate is going up.

24 So as the VA's argued on one time, your numbers are  
25 going down, I'm going to posit to you, that our suicide rate is

1 going up dramatically and it could be argued that that's  
2 because we're leaving our most vulnerable on the street without  
3 housing.

4           The second thing is, when a combat vet goes to see a  
5 psychologist or a psychiatrist, typically they spend at least,  
6 the kids in my platoon, they spend -- unfortunately I carry  
7 this toolbox with me, they go to a professional for a half an  
8 hour or 45 minutes two or maybe luckily three times a week, but  
9 let's say twice a week. Don't get me wrong, that's excellent  
10 treatment, thank you. Thank you.

11           But the real way veterans heal is talking to  
12 veterans. It's in a community, because you see veterans cure  
13 themselves because they will talk about their combat  
14 experiences when they won't tell their wives, they won't tell  
15 their children, they won't tell their grandchildren, but they  
16 will say to another veteran, my God, I had to do this in combat  
17 and the other veteran says, hey, I had to do something like it,  
18 they're not alone.

19           And when you create communities of veterans, the best  
20 healing process is when they can get together and talk to each  
21 other because that can be 24/7 or a living arrangement. Now,  
22 that doesn't degenerate from a psychiatrist or a psychologist,  
23 but I think, Dr. Sharon, that there's been a huge issue with  
24 society believing that professionals who simply give medicine  
25 for half an hour or some prescription is curing this problem,



1 the other half of that is getting veterans together. And  
2 that's why they cling to communities. That's why they have the  
3 American Legion, Veterans of Foreign Wars, that's why you have  
4 all these associations.

5 Now, Brad.

6 **MR. ROSENBERG:** This being an administrative matter,  
7 I see that there's nobody at the CourtSmart terminal, I just  
8 want to make sure that's still running.

9 **THE COURT:** Oh, bless you, Brad. No, go over and  
10 sit, I don't trust it one bit. Yeah. It's called the federal  
11 courts coming back, thank you, Brad, I appreciate it.

12 Okay. Now, Dr. Sharon, you can disagree with me but  
13 I'll tell you what I know I'm right about that and I could  
14 almost take judicial notice that veterans have to live in a  
15 community to heal.

16 **DR. SHARON:** Yes, Your Honor. I spent a good part of  
17 my career developing what in the military community would call  
18 Battle Buddy Programs, testified to the House Veteran Affairs  
19 Committee on two matters, homelessness and suicide. And my  
20 primary recommendation was to expand peer services. So I'm  
21 with you entirely.

22 As I said when I testified, and I would say this  
23 about temporary settings, we can't just having housing  
24 projects --

25 **THE COURT:** Right.

1           **DR. SHARON:** -- we have to have communities. That  
2 community involves, of course, interplay between individuals,  
3 but it also has to require that there are certain assets in  
4 that community, amenities, services, environments for people to  
5 recreate and relax.

6           And I would hope that when we contemplate putting a  
7 significant number of veterans in a temporary setting that we  
8 incorporate principles of community.

9           **THE COURT:** Uh-huh. That was the connective tissue  
10 that I took that you were speaking about. Anybody with any  
11 military background knows, quite frankly, could take judicial  
12 notice of it. These communities need to be formed, because the  
13 healing process can't just be a half hour a week or programs  
14 with the VA or any other mental professional for a small period  
15 of time. That's the beginning of the process, including  
16 medication sometimes.

17           **DR. SHARON:** Yeah, I would agree and I'm a  
18 psychiatrist, but I'm also a big time supporter of non-clinical  
19 health and human services which are critical.

20           **THE COURT:** Yeah, yeah.

21           And, folks, that's why the American Legion exists,  
22 the Vietnam veterans, the DAV, it's more than just association  
23 in terms of name or getting together to have a beer, it's real  
24 catharsis for those veterans sharing those experiences that are  
25 so unique to them that this quite frankly the civilian world

1 just doesn't see.

2           And that's why you need this housing out there on the  
3 campus, but Rob, I'm like not to interfere with south -- with  
4 your vision of the south campus. I'm trying to get there. But  
5 if you keep -- not you, Rob. But if you keep telling me you  
6 don't have land, then you're putting me in a box, okay, because  
7 then I'm going to go find that land and then it's going to come  
8 to south campus or Brentwood or whatever, okay or UCLA.

9           Now, I wish UCLA was here. I'm not meaning to  
10 frighten them, but this is right back on the Board and I don't  
11 want to hear on July 5th that they didn't have notice or that  
12 they were surprised. They've been given a great amount of  
13 grace to start finding other facilities or start getting down  
14 to the bargaining table.

15           And what I'm worried about is everybody in the  
16 bureaucracy will wake up in April some time and start serious  
17 negotiation and come to me in July and say -- this is a big  
18 surprise, Judge, you've now ordered the back wall of the UCLA  
19 stadium knocked down and modulars.

20           So I'm not saying it's going to happen, I'm hoping  
21 that we reach some kind of veterans housing, maybe four  
22 stories, maybe you can preserve these structures, but it has to  
23 be something consequential, because this land is the only value  
24 quite frankly. Okay?

25           Now, Dr. Sharon, eventually we need you. We need you

1 in much more of a role than your capacity of testimony. And we  
2 need Dr. Braverman quite frankly if we were cooperative. Right  
3 now, we're not cooperative. We're still in the appeal stage  
4 and -- all right. Anything else you'd like to say?

5 **DR. SHARON:** Just a quick comment. First on follow  
6 up to the issue of Battle Buddies and the importance of vet to  
7 vet engagement, on the initial master plan in 2016 which I  
8 worked on for over a year, there was a recommendation to use  
9 building 264, I would say possibly 33 as a peer center or a  
10 Battle Buddy headquarters.

11 **THE COURT:** Say that again a little bit slower.

12 **DR. SHARON:** My fault. What I was trying to relay is  
13 that in the original 2016 master plan, which I worked on for  
14 over a year when Bob McDonald was engaged, we had recommended  
15 that there be a headquarters, a Battle Buddy or peer  
16 headquarters on the campus and building 264 and also building  
17 33 which is one of the originals were recommended as possible  
18 sites.

19 I did want to make a comment about 5, which is what I  
20 believe was suggested that brought me up here. I -- there was  
21 an agreement I believe clinically from the VA and the plaintiff  
22 side about the fact that 5 could be problematic based on its  
23 location.

24 **THE COURT:** Right.

25 **DR. SHARON:** And at that time there was at least

1 temporarily there was expressed interest in using 4-A. And I  
2 understand that that has shifted. And what I would say about 5  
3 is that if 5 were integrated into the clinical array of the  
4 domiciliary then it would make sense. I think trying to  
5 isolate it as an island of temporary housing would be difficult  
6 and I would say a mistake.

7           So if 5 were used for temporary and it was integrated  
8 into some of the services at the dom or U, and I believe the VA  
9 has suggested that some of that inventory in the dom could be  
10 used as temporary housing. I think that makes sense.

11           **THE COURT:** Okay.

12           **DR. SHARON:** Did you follow me, Your Honor?

13           **THE COURT:** Yeah. No, I'm just absorbing for a  
14 moment.

15           There's always talk since we're kind off track for a  
16 moment, there's also talk of this connective tissue, this  
17 township. And that to me has been all over the place. No  
18 matter what, I need to get housing either temporary or  
19 permanent first, and that doesn't mean I have to ignore the  
20 township, but the idea that it was put out of having a separate  
21 master plan, so we're not delaying this housing and all these  
22 machinations and meetings, and that would be anchored by the  
23 chapel, you've got the theatre, in other words, you've almost  
24 got a neat triangle.

25           So, Mr. Johnson, Mr. Soboroff, if we took that

1 triangle of the theatre and the chapel, are we taking away any  
2 of the proposed housing you have in this exhibit?

3 **MR. JOHNSON:** No, what you're --

4 **THE COURT:** I can't hear you and I have CourtSmart.

5 **MR. JOHNSON:** Sorry.

6 **THE COURT:** Now ultimately this is all the VA's  
7 position, you control this in a sense, you control the  
8 sequencing, et cetera, I've just made an order by 2030 of the  
9 1,800. It's your decision how you sequence that in. My only  
10 adamancy is I need a hundred veterans off the street as of  
11 yesterday and that I'm going to hang pretty tough with you on.

12 **MR. SOBOROFF:** Judge, Randy will go into the detail  
13 but the answer to your question is no. And --

14 **THE COURT:** Then why don't we clear this up --

15 **MR. SOBOROFF:** But it hasn't been a homework  
16 assignment for us to take a hard look at that, although we  
17 have.

18 **THE COURT:** Well, why don't we just get rid of that  
19 area hypothetically for the time being, no decision, but that  
20 could potentially be our township area, however that's  
21 developed and get on with the rest of the project because that  
22 doesn't interfere --

23 **MR. SOBOROFF:** In finding land, Judge, the -- can you  
24 point out the road, the double road with the big median in it?

25 Yeah, yeah, take it all the way around, well

1 especially this area. There's an issue with the cathedral that  
2 clips into the road, but this road is way too wide. Pacific  
3 Palisades only has two lanes in it.

4 **THE COURT:** You know for the time being it's minutia.  
5 I just care about this --

6 **MR. SOBOROFF:** But it's -- okay, I'm just saying  
7 there's more land than you think available.

8 **THE COURT:** Okay.

9 **MR. SOBOROFF:** That's my point.

10 **THE COURT:** Oh, I haven't even touched this yet. I  
11 have threatened anybody with south campus, which has a huge  
12 lawn that nobody's doing anything with.

13 **MR. SOBOROFF:** Okay. Okay.

14 **THE COURT:** We've got more land out there, that's  
15 why -- I just don't accept the VA's position that we don't have  
16 land. But if I'm put in that position then I'm going to find  
17 that land, it's easy.

18 I want to hear from Brentwood for just a moment,  
19 because I think you've already accomplished if you will, 1,800  
20 we're already at 250 something, which was our number, Rob, that  
21 I kind of wanted to get to, that 200 to 300 range, take a  
22 pause, draw back. I see that the judgment actually says 700  
23 with adamancy that Brad's arguing but I've got a record this is  
24 supposed to be up to 750 and I can modify that very easily. I  
25 don't want to put you in that trap.

1           Number two, I want it absolutely clear why this one  
2 year is in effect. After the prior case, not this group of  
3 ethical good people in front of me, but somebody went back and  
4 constructed a ten year lease at a 1 percent inflation rate. We  
5 need a year to sort out what we really need and don't need and  
6 that's why I don't care, in fact, I'll modify the order if you  
7 want to, if your position is you can't negotiate, not negotiate  
8 with me with Brentwood, I'm happy to have you take a shot at  
9 that. I'm happy to have you negotiate this. And do better  
10 than what Brentwood's proposed or what UCLA is proposing. I'll  
11 give all that power back to you.

12           But what I won't budge on right now is having a one  
13 year limitation because you went right -- not you, I'm sorry,  
14 the VA went right back historically and put out a ten year  
15 lease which means now all of that property is off the board and  
16 we couldn't even consider UCLA, we couldn't consider Brentwood,  
17 that's ridiculous with 32 acres out there.

18           Now, let me talk to Brentwood. You want to  
19 intervene.

20           **MR. SANDLER:** Yes, Your Honor.

21           **THE COURT:** Why?

22           **MR. SANDLER:** A couple of reasons, Your Honor.

23           Number one, it's always been contemplated as part of the  
24 settlement agreement -- excuse me.

25           Jonathan Sandler, Your Honor, for Brentwood. A



1 couple of reasons to intervene, Your Honor. Number one it was  
2 always contemplated as part of the settlement agreement which  
3 the Court has preliminarily approved and is subject to the  
4 final fairness hearing next week, that in order for Brentwood  
5 to maintain its position for appeal, if the settlement  
6 agreement does not go through that Brentwood would intervene  
7 and file a notice of appeal.

8 **THE COURT:** I've never agreed to that.

9 **MR. SANDLER:** The settlement agreement called it a  
10 protective appeal.

11 **THE COURT:** I've never agreed to that. Show me on  
12 the record where I've ever stated that.

13 **MR. SANDLER:** I'll have to review the record when the  
14 Court --

15 **THE COURT:** Review the record.

16 **MR. SANDLER:** -- did go through the settlement  
17 agreement in detail.

18 **THE COURT:** No, please do so.

19 **MR. SANDLER:** I will, Your Honor.

20 Secondly, Your Honor, the filing of the motion to  
21 stay by the VA jeopardizes or potentially jeopardizes the  
22 settlement agreement. The settlement agreement, Your Honor --  
23 excuse me, the motion to stay has -- extends to the Court's  
24 orders but for the order voiding the lease.

25 In other words, Your Honor, if the Court was to grant

1 the motion to stay the -- Brentwood would be put in the  
2 position where it would not have a lease --

3 **THE COURT:** The Circuit Court, have they granted that  
4 motion to stay?

5 **MR. SANDLER:** Either Court, Your Honor.

6 **THE COURT:** Now, just a moment. You only have a one  
7 year lease anyway.

8 **MR. SANDLER:** Correct, Your Honor.

9 **THE COURT:** Now what seems ridiculous about this  
10 argument is that this is for one year. So even if they stayed  
11 it -- in other words, what you were really bargaining for was  
12 to keep the core area. I think that may be to everybody's  
13 benefit.

14 But why would I let you intervene? Why would I let  
15 you take a contra position to UCLA and make a different ruling  
16 when I strongly feel that you are not only on notice, but you  
17 could not -- not you personally, I'm sorry, I have ethical  
18 excellent counsel in front of me, I want that clear, but your  
19 entity not only knew this, why would I take a different  
20 position than UCLA?

21 **MR. SANDLER:** I think that Brentwood is situated  
22 differently than UCLA, Your Honor.

23 **THE COURT:** In what way?

24 **MR. SANDLER:** Well, for one we've participated in  
25 good faith in the settlement process since the Court's

1 injunctive hearing. We have a settlement in principle that  
2 will allow Brentwood to enter into a lease with the VA that  
3 will continue on.

4 **THE COURT:** Then why don't you just do the right  
5 thing, why doesn't Brentwood come forward, and I'm going to be  
6 blunt about this, and do what you should have long time ago  
7 with or without a settlement, why don't you open up this to the  
8 veterans till 2 o'clock in the afternoon, just like you  
9 bargained regardless? Why don't you put the \$3 million forward  
10 because quite frankly if you don't, then the Court is going to  
11 take some kind of action, okay, and you're right back in the  
12 playing field.

13 Now if you want that, so be it. I'm not telling you  
14 what action I'm going to take, but if you're moving backwards  
15 on this which I perceive you are, because I'm not hearing  
16 anything for the principal benefit of veterans, I'm hearing  
17 once again, for the benefit of Brentwood School. And I think  
18 you putting up \$3 million may be a small price to pay in this  
19 matter that the Court is willing to exceed to.

20 Now the box that I'm in is I'm ordering the VA to do  
21 this potentially and I understand that's potentially  
22 inconsistent, but I think it's a value that it does principally  
23 benefit, but if the VA can negotiate with you and get you to a  
24 higher position or a lower position I might consider that. But  
25 right now I don't see why I'm going to allow you to intervene

1 at this late stage.

2 **MR. SANDLER:** Your Honor, I want to make sure I'm  
3 clear because I don't agree with what the Court just said.  
4 Brentwood is not backing out of its settlement agreement.  
5 Brentwood is not backtracking, Brentwood remains committed.  
6 We --

7 **THE COURT:** Hypothetically let's assume that I deny  
8 your motion to intervene. Now what are you going to do? Go  
9 back and think about that and talk to your Board. You're right  
10 back in the playing field and you don't know what I'm going to  
11 do. I'm not sure yet what I'm going to do. But I'm going to  
12 do something.

13 And number two, it seems to me that \$3 million is  
14 money well spent and Brentwood taking the position of opening  
15 this up to the veterans immediately whether you have a  
16 settlement or not is just the right ethical and moral thing to  
17 do, just as the VA right and ethical and moral thing is to get  
18 a hundred of these modulars up.

19 **MR. SANDLER:** And we're making -- Brentwood is making  
20 those changes to the hours. They're staffing, they are hiring  
21 staff to do that, they are getting people trained to do that.

22 Your Honor, just Monday we hosted a very large  
23 significant stand down on campus. We are taking actions as if  
24 the settlement agreement is going to go through.

25 **THE COURT:** Time out. All appreciated, but the most

1 valuable thing that we have is about 30 some acres that  
2 Brentwood possesses. As long as the VA says that they don't  
3 have this property, now we find our situation looking at UCLA  
4 and Brentwood and everybody ignored that in the past. So this  
5 is back on the table, it's your choice. If you want to come  
6 back into the floodlights, that's up to you, but you could  
7 probably anticipate when you talk to your Board that there's a  
8 good chance I'm going to deny this motion to intervene.

9 And in doing so, then you're going to make the choice  
10 of what to do. So not a final ruling yet, because I want to  
11 see what the position of the plaintiffs are in this matter and  
12 the VA. So stay there for just a moment. Let's find out what  
13 their position is, on behalf of the plaintiffs.

14 **MR. SILBERFELD:** Your Honor, we did not oppose the  
15 motion to intervene for several reasons. One is that the  
16 settlement agreement was integrated and interconnected with VA  
17 entering into a new one year lease with --

18 **THE COURT:** But they're opposing that. The VA  
19 doesn't want the Court involved and the VA doesn't want --

20 **MR. SILBERFELD:** Correct.

21 **THE COURT:** -- to be dictated to in terms of one  
22 year.

23 **MR. SILBERFELD:** Correct. And if their stay motion  
24 were to be granted either here or at the Circuit, the effect of  
25 that would be that the settlement with Brentwood School would

1 be at least in limbo, if not destroyed because at the moment at  
2 least, since they are not appealing the voiding of the lease  
3 with Brentwood, and they're not seeking a stay of that, the  
4 effect would be that Brentwood would be basically trespassing  
5 because they don't have a new agreement, they don't know who to  
6 pay rent to on December 1, for example, and their settlement  
7 agreement to pay \$3 million within 60 days and \$2 million in a  
8 year is at least in jeopardy and all of this is not the doing  
9 of either Brentwood or the plaintiffs frankly, it's the doing  
10 of the VA who are refusing, as I understand it, to enter into a  
11 new one year lease consistent with the Court's judgment about  
12 this.

13           That is why this motion to intervene is made  
14 necessary and candidly and we're kind of anticipating one of  
15 the arguments we'll make in our brief on the motion to stay  
16 tomorrow candidly, there's no irreparable harm at all to the  
17 VA. There's irreparable harm to the plaintiffs who won't have  
18 housing if the stay is granted, and there's irreparable harm to  
19 Brentwood School and those facilities and the expectation that  
20 the school would have a one year term to continue its  
21 operations, keep the core, make the rest available, pay rent,  
22 pay the \$3 million, pay the \$2 million in a year, all of that  
23 is in jeopardy.

24           And so the irreparable harm if there is any to be  
25 talked about here is not irreparable to the VA, but irreparable

1 harm to the plaintiffs, who will not have the housing and I do  
2 want to return at some point to the ex parte application for  
3 the emergency order, but there will also be irreparable harm to  
4 Brentwood, which is why we support their intervention. Because  
5 I think ultimately they're going to take a position opposing  
6 the stay motion as well.

7 **THE COURT:** Okay. Let's hear from the VA for just a  
8 moment. Okay. I've got an open mind on this, but I'm trying  
9 to anticipate and think through a whole bunch of options, so  
10 Brad, now it's your turn.

11 **MR. ROSENBERG:** Sure. The federal defendants do not  
12 oppose Brentwood's motion to intervene.

13 **THE COURT:** And let me hear that again.

14 **MR. ROSENBERG:** The federal defendants do not oppose  
15 Brentwood's motion to intervene.

16 **MR. SILBERFELD:** If I could just observe one other  
17 things, Your Honor.

18 **THE COURT:** Does that mean then that the ultimate  
19 issue though is what will the VA take -- a position concerning  
20 the settlement. In other words, that's the ultimate issue  
21 because before the VA is opposed to the settlement with  
22 Brentwood. And my speculation is that they can't do any better  
23 in terms of bargaining, their position is that they can't  
24 bargain, which I disagree with, they can, and I need to clarify  
25 that apparently.

1           And number three, where I'm drawing the line is  
2 though that they can't enter into an initial lease of over one  
3 year and that would be interesting for the Circuit to look at  
4 because then we're tying up property for ten years, just like  
5 the prior case, Valentini. That means if we need that property  
6 we have to go back and break in this list and that's exactly  
7 what the VA did -- not you folks. Once again, I've got honest  
8 ethical counsel and witnesses here, I want that absolutely  
9 clear.

10           We're right back after the Valentini case, put it on  
11 a ten year with a one year -- with a 1 percent inflation, what  
12 kind of sweetheart deal is that. That's extraordinarily bad  
13 and that's why I'm limiting you to one year because I want to  
14 sort out the property.

15           It may be that you could have a longer lease in the  
16 future, but if your position is I don't have property then I  
17 need to have as much property available as possible and that's  
18 why this can't be more than a one year lease.

19           **MR. SILBERFELD:** And my understanding of the VA  
20 position is and has been that I'm sorry to put it as bluntly as  
21 this, the VA does not want the Court telling the VA what the  
22 terms and conditions of a lease are.

23           **THE COURT:** Oh, I understand that.

24           **MR. SILBERFELD:** They want that unfettered right.

25           **THE COURT:** And the Court does intend to have some



1 supervisorial position now.

2 **MR. SILBERFELD:** Right.

3 **THE COURT:** I'm not sure if I want to be as active as  
4 I've been in the future, but this demands some kind of  
5 supervision or we're right back to the Valentini case. Some  
6 judge ruled a nice order that was completely ignored, and also  
7 quite frankly and once again, no fault of the present counsel,  
8 absolutely enters into a conversation between two VA officials  
9 that I can't -- well, about how to keep veterans out of giving  
10 input and how to keep a FOIA request and then front UCLA quite  
11 frankly by calling them over to the athletic department and  
12 then UCLA, as high as the chancellor's office and the  
13 communications department decides to enter into this  
14 complicitly and make the announcement to shield the VA.

15 That has created so much distrust I would think on  
16 the plaintiffs' part, so there just has to be more open  
17 communication in the future and the Court needs to be there to  
18 assure that frankly, amongst other things.

19 And also in the final analysis, I think now the Court  
20 needs to find that this is principally for the benefit, if it  
21 is for the veterans, these ten year leases have to fall by the  
22 wayside until we know how much property we have. And it  
23 certainly isn't going to be the 1 percent inflation rate in the  
24 future.

25 **MR. SILBERFELD:** Your Honor, can I make one other

1 observation? It has to do with the difference between UCLA and  
2 Brentwood, as it relates to their conduct in these proceedings  
3 over the last 60 days?

4           UCLA has never come forward to the plaintiffs. I  
5 realize they had an overture with the special monitor and we  
6 have that deal in place, but they've never come forward and  
7 made a significant settlement proposal that involves the use of  
8 that land.

9           Brentwood did and Brentwood has and those core  
10 facilities that cost I think 20 or 30 or \$50 million, I forget  
11 which figure it is, the fields, the weight room, the pool, the  
12 gymnasium, all of those facilities as the Court has found are  
13 ready are things that the VA is never going to build, that  
14 they're there for the use of veterans, albeit with hours, but I  
15 think that is a difference that is worth nothing in terms of  
16 the relative position of those parties.

17           **THE COURT:** When will I get that briefing then from  
18 you? In other words --

19           **MR. SILBERFELD:** On the motion to stay? Tomorrow.

20           **THE COURT:** Okay. And concerning your position about  
21 Brentwood intervening?

22           **MR. SILBERFELD:** We had not planned to file anything.  
23 We told Mr. Sandler that we do not oppose their intervention.

24           **THE COURT:** All right. Let me go back and think  
25 about it then, keep --

1           **MR. SILBERFELD:** And we continue to --

2           **THE COURT:** -- an open mind about that.

3           **MR. SILBERFELD:** -- maintain that.

4           **THE COURT:** There may be some differences. There may  
5 not from my perspective, just not sure yet, but I want to raise  
6 the warning sign that I may not find this appropriate for  
7 intervention. I may, let me go back and really mull that over.

8           **MR. SANDLER:** Understood, Your Honor.

9           **THE COURT:** Okay.

10          **MR. SANDLER:** Thank you.

11          **THE COURT:** All right. What else do we want to do  
12 before we go out to the site?

13          **MR. SILBERFELD:** Well, I think Mr. Rosenberg wants to  
14 oppose my ex parte application for emergency order No. 3 --

15          **THE COURT:** Okay. Now we're -- Brad, the lectern  
16 without interruption.

17          **MR. ROSENBERG:** This is Brad Rosenberg from the  
18 Department of Justice.

19                 I do want to address the point that Mr. Silberfeld  
20 made and then I actually want to raise one minor but  
21 significant new point. Regarding the emergency motion No. 3, I  
22 think our position is set forth in the e-mail that I sent to  
23 Mr. Silberfeld which he attached as Exhibit C to his motion.

24                 And I think the Court may have already effectively  
25 granted that motion, but to the extent it has any questions

1 regarding our position it is set forth in that e-mail in some  
2 detail.

3 I'll also note the one additional concern that may  
4 not be fully captured by my e-mail is the potential for  
5 liability, particularly if we're dealing with potholing, and  
6 I'll ask the Court to recall the testimony from Dr. Braverman  
7 at trial, I believe when they were doing some digging for a new  
8 bridge home, they, you know, contacted some asbestos  
9 underground. And this is obviously a very old campus.

10 What's underneath these parking lots is, you know, a  
11 bit of mystery, that's why I think plaintiffs want to conduct  
12 this site analysis and the potholing and we're concerned about  
13 liability issues should, you know, something like power be  
14 knocked out to the north campus or should something be struck.  
15 But our position otherwise is set forth in my e-mail.

16 **THE COURT:** Brad, why are we going underground? In  
17 other words, we've got overhead utilities, electricity, we've  
18 got the ability to run sewer overground. Why are we going  
19 underground?

20 **MR. ROSENBERG:** I don't know whether we are or are  
21 not going underground. I think the question now is whether  
22 this survey is necessary. But also it's a question of what is  
23 the appropriate process by which the survey should take place.  
24 And as set forth in my e-mail, you know, any work that would  
25 be -- this is all -- overlaps with what would be contemplated

1 as part of a larger site survey and prep contract.

2 And so in some ways we think that the plaintiff's  
3 request is getting a little bit ahead of itself because this is  
4 work that VA, you know, ultimately would need to conduct and  
5 Ms. Black can correct me if I'm wrong, but she's nodded her  
6 head yes, this is work that VA would ultimately need to conduct  
7 in order to be able to prepare the sites for any temporary  
8 housing units that would be placed there.

9 Now, Mr. Silberfeld had said that this will be done  
10 on plaintiff's dime, you know, that's another concern that we  
11 have because this goes around VA's contracting process by  
12 effectively fronting some of this work ahead of when VA would  
13 otherwise be contracting for this work to be done.

14 We appreciate plaintiff's offer to front these costs.  
15 What's unclear though is whether the Government would  
16 ultimately need to pay those costs if plaintiffs seek to  
17 recover those costs from the Government later in this  
18 litigation, because if that's the case, then it is effectively  
19 a workaround VA's procurement processes and that's another  
20 basis for us to object.

21 **THE COURT:** Okay.

22 **MR. ROSENBERG:** I don't have anything else on that  
23 issue, Your Honor. There was one issue that I did want to --  
24 you know, there's actually two issues that I wanted to raise,  
25 now that I think about it.

1           One concerns this Court's order regarding I believe  
2 it's -- I forget whether it's emergency order No. 1 or  
3 emergency order No. 2 --

4           **THE COURT:** Right, it's emergency order No. 1.

5           **MR. ROSENBERG:** Well this -- specifically what I want  
6 to address is the Court's decision to set aside the contract  
7 and requirements and procurement requirements that otherwise  
8 apply --

9           **THE COURT:** Only to the first --

10          **MR. ROSENBERG:** -- to VA.

11          **THE COURT:** -- hundred and some modules, if you  
12 recall.

13          **MR. ROSENBERG:** I do recall that. And I just want  
14 the record to be clear that VA does object to that aspect of  
15 the order. You know, specifically for six reasons.

16                 And I don't think we've had a chance to really fully  
17 explain VA's concerns with that aspect of the order. We  
18 recognize that the Court has already entered the order, but  
19 it's nonetheless this is an important point to the VA.

20                 You know, one of the requirements that we understand  
21 the Court to have set aside is the SDVOSB requirement which is,  
22 you know, Service Disabled Veteran Owned Small Businesses.

23          **THE COURT:**

24          **MR. ROSENBERG:** What that is, is it's a requirement  
25 set in 38 U.S.C. 8127(d) and it requires VA to set aside

1 contracts for service disabled veteran owned small businesses  
2 when there's a reasonable expectation that two or more of those  
3 veteran owned small businesses will submit offers and award of  
4 a contract that can be made at a fair and reasonable price.  
5 And that's obviously a provision that benefits veterans.

6 **THE COURT:** Sure. And balancing those two, veterans  
7 are better served immediately a hundred modulars, than they are  
8 with that competitive process and you'll have that properly in  
9 the rest of the long term supportive housing and most of the  
10 other modulars. But we need to get a hundred or so veterans  
11 off the streets now.

12 **MR. ROSENBERG:** Okay. The other -- the next  
13 requirement is the Buy America Act, of 41 U.S.C. 83 which  
14 restricts the purchase of non-domestic supplies and  
15 construction materials --

16 **THE COURT:** Good. Let's have some Americans  
17 available and not dead so they can use that modular. Okay?  
18 I'm not too worried about temporarily using Japanese steel or  
19 American steel. Next, okay.

20 **MR. ROSENBERG:** The next requirement are contractor  
21 responsibility requirements set forth in FAR 9.104 which  
22 identifies elements prospective contractors must meet to be  
23 determined responsible and eligible for a contract award.

24 **THE COURT:** We could if we all quit slow walking on  
25 both sides.

1                   **MR. ROSENBERG:** The next requirement is the Miller  
2 Act, 40 U.S.C. Section 31, also FAR 28, which is a mandatory  
3 construction requirement for contractors to submit performance  
4 and payment bonds for the protection of both the Government and  
5 suppliers.

6                   The next requirement the VA would normally comply  
7 with that it views this Court has having waived are federal and  
8 safety labor standards in FAR 22, which identifies various  
9 labor requirements, including wage determinations and safety  
10 standards for the protection of laborers.

11                   And finally the requirement for certified cost and  
12 pricing data in 10 U.S.C. Chapter 271, 41 U.S.C. 35 and FAR  
13 15.403-4 which details the information required to assess the  
14 reasonableness of offered prices.

15                   Again, just for the record, these are all  
16 requirements the VA would normally comply with and that it  
17 feels strongly should be complied with, but understands that  
18 this Court has waived.

19                   **THE COURT:** Sure. With the emergency inclement  
20 weather and veterans suffering to this degree and balancing  
21 this, this is far more beneficial that we get these modulars up  
22 immediately.

23                   **MR. ROSENBERG:** Understood that the Court has made  
24 that determination.

25                   **THE COURT:** Okay.



1           **MR. ROSENBERG:** There's one last issue I do want to  
2 raise and it actually does involve UCLA. And this Court's most  
3 recent order at Docket No. 386 permitted UCLA to access its  
4 baseball stadium. And it's an issue that we would like to  
5 request a little bit of -- on which we'd like to request some  
6 clarification.

7           As I noted in our last hearing before the Court  
8 entered the order, for any payments to remain on the West LA  
9 campus, they must be payments that are rent, pursuant to a  
10 lease, which then means that those payments would go into the  
11 lease revenue fund --

12           **THE COURT:** Uh-huh.

13           **MR. ROSENBERG:** -- that is the fund that allows  
14 for --

15           **THE COURT:** Sure.

16           **MR. ROSENBERG:** -- grievance on the campus.

17           The Court's emergency order refers to UCLA's  
18 representation of a forthcoming payment of \$600,000.

19           **THE COURT:** Within 14 days of the order.

20           **MR. ROSENBERG:** And we just want to make clear that  
21 or would like the Court to make clear what the form of that  
22 payment is because there is some ambiguity and if that payment  
23 is not construed to be a rent payment under a lease going into  
24 the lease revenue fund, then there is a risk that the money  
25 instead would go to the Department of Treasury, which nobody in

1 this courtroom wants.

2 **THE COURT:** Okay.

3 **MR. ROSENBERG:** And so we'd ask for clarification  
4 that the payment that UCLA is required to make --

5 **THE COURT:** You and UCLA should get together and  
6 solve that for the Court. I don't know all of your, you know,  
7 requirements as you, I'll leave that to you to solve for the  
8 Court.

9 **MR. ROSENBERG:** The Court has previously referred to  
10 those payments, I think today may have referred to those as  
11 being rent, does the Court construe those payments as being  
12 rent?

13 **THE COURT:** You draft the document, let me look at  
14 it, with UCLA. In other words, every time I clarify I'm going  
15 to hear another parade of horrible or what can't be done, and  
16 I'm not saying to you personally, but there's always going to  
17 be a parade of horrors. You draft that for me and show me  
18 what that's going to look like.

19 **MR. ROSENBERG:** What is the Court asking for us to  
20 draft? Is it a --

21 **THE COURT:** Some way you can get the \$600,000 that is  
22 going to be paid to you hopefully and have that designated  
23 locally, not to Treasury. Now we're done with this discussion.  
24 Okay. You resolve that for me, I'm going to put that burden on  
25 you.

1           **MR. ROSENBERG:** I'm not sure that it's something that  
2 can be resolvable --

3           **THE COURT:** Okay.

4           **MR. ROSENBERG:** -- in the manner that the Court is  
5 contemplating.

6           **THE COURT:** Then the \$600,000 is going to arrive and  
7 you're going to have to decide what to do with it.

8           **MR. ROSENBERG:** Thank you, Your Honor.

9           **THE COURT:** Okay. Roman.

10          **MR. SILBERFELD:** Just two things, Your Honor. On the  
11 emergency order No. 3 request, on balance, we ask the Court to  
12 issue that order. We will front the cost of doing that work.

13          **THE COURT:** Yeah.

14          **MR. SILBERFELD:** It will be, just to be clear with  
15 everyone, part of a reimbursement request that we make at a  
16 later time, but I think this is a true emergency. We will not  
17 get housing built by February 1 if we don't start soon.

18          **THE COURT:** I absolutely agree.

19                 This isn't going to get slow walked, this is an  
20 emergency and when I signed that order to begin with I meant  
21 it. This is an absolute let's get a hundred veterans into  
22 shelter as quickly as we can. And if we can't do this, I don't  
23 see any hope quite frankly except slow walking this entire  
24 process and being right back to the Valentini case where the  
25 judge has issued an order and nothing is forthcoming. And

1 we're not going to end up in that position unless the Circuit  
2 decides to reverse me. All right.

3 **(Pause)**

4 **THE COURT:** All right. So ordered and you can docket  
5 this number or this order, emergency order No. 3. Now having  
6 done that, how are we going to now accomplish this ground radar  
7 because by order of this Court you do have access to 4-A, 5,  
8 you have access to Magenta B and you have access at the present  
9 time to parcel 7.

10 **MR. SILBERFELD:** Thank you, Your Honor.

11 **THE COURT:** I don't think the Court needs to be any  
12 more intrusive at this time, I don't think that's needed. I  
13 think that would be overbroad and I think it would deflect from  
14 the emergency that we need to focus on.

15 Now, we're going to go out there and hopefully we  
16 won't be there till midnight, but I want these buildings opened  
17 up, okay. And I may be asking you some informal questions  
18 about the sewer line, because remember during the trial, once  
19 again with nothing to do with counsel or the present  
20 representatives of the VA, I was presented with a document with  
21 red lines all over it concerning sewers that weren't complete  
22 or that needed fixing until the Court part way through that  
23 testimony noted that 401 and MacArthur Field were actually  
24 coming to the forefront and those red lines indicated at that  
25 time that there was no sewer and no facilities.

1 Now, the witness on the stand never told the Court  
2 that they were dealing, and I want you to hear this, that they  
3 were dealing with an old document of 2020 and 2021. Some  
4 people might think that's misleading, others might think that  
5 that's just negligent, but it would have left the Court in  
6 the -- or just unrecognized by the witness.

7 But it would have left the Court then in the position  
8 of believing that the sewer lines weren't in and the electrical  
9 wasn't in. The Court spontaneously asked, well isn't 401 and  
10 MacArthur Field coming on line. And at that time, the witness  
11 said, Judge, these aren't up to date.

12 Now that would've been disastrous for the Court to  
13 make a ruling based upon that document when nobody had  
14 represented to the Court how old that was and thank goodness  
15 we'd been out there, that's one of the benefits of being there  
16 and also hearing that over \$100 million of infrastructure was  
17 already in place.

18 What did we do with that \$100 million? Well, it went  
19 into those same areas. Do you have any current document that  
20 will supplant that document because that document was really  
21 misleading? And if you don't, just say you don't.

22 **MS. BLACK:** We've submitted the documents to the  
23 Court that are the most recent.

24 **THE COURT:** Okay. Put it up on the board for me.  
25 No, you two get together now so we're not wasting time

1 otherwise you'll be there till midnight with lamps on tonight.  
2 Put that up, I want to see it.

3 **(Pause)**

4 **MR. ROSENBERG:** So, Your Honor, this is Brad  
5 Rosenberg. I think Ms. Black was referring to documents that  
6 she has provided to plaintiffs as part of a conference and I  
7 don't think that we have them with us right now.

8 **THE COURT:** I haven't seen it, have I?

9 **MR. ROSENBERG:** Yeah, I don't think that they were  
10 filed with the Court. I think that they were documents that,  
11 you know, as part of the ongoing conferrals that we've had --

12 **THE COURT:** Okay.

13 **MR. ROSENBERG:** -- with the plaintiffs and their  
14 experts.

15 **THE COURT:** I want that filed as a formal document.  
16 I want to see what our present sewer look like, our present  
17 facilities look like, and if I'm going to make halfway decent  
18 decisions or forebear in the future I need to be educated  
19 continually. And that's to both of your benefits.

20 All right. Now, are we going out there or not?

21 **MR. SILBERFELD:** Fine with us.

22 **MR. ROSENBERG:** We'd planned for that, Your Honor.

23 **THE COURT:** Rob, good for you?

24 **MR. MERCHANT:** Yes, sir.

25 **THE COURT:** Chelsea, good for you?

1           **MS. BLACK:** Yes.

2           **THE COURT:** Okay. Now, just a moment, Craig, let me  
3 talk to you and Baron for just a moment. I'll be right with  
4 you, don't go anywhere.

5           **(Pause)**

6           **THE COURT:** Okay. Folks, first of all I want a clear  
7 record. Do you want me there or not? In other words,  
8 eventually I'm going to absorb this and I said to Brad, and I  
9 we had an informal conversation at the sidebar, but I want to  
10 make certain that you truly want me out there, okay. And if  
11 you truly want me out there, then it's a great education for me  
12 so I'm trying to make intelligent decisions in the future. But  
13 if you don't, that's fine. But eventually I'm going to find  
14 out about this either through diagrams, court, and quite  
15 frankly at some point I'm going out there with or without you,  
16 so your call.

17           And by the way, if I hadn't been out there I would've  
18 never realized this document with the sewer lines that were in  
19 red going by MacArthur and 401. I would have never seen it.  
20 If I wasn't out there, I wouldn't be able to take a look at  
21 that back wall of the UCLA stadium and half the other things  
22 that the Court's been able to see.

23           **(Pause)**

24           **MR. ROSENBERG:** One moment, Your Honor.

25           **THE COURT:** Sure.

1                   And so if there's been a change in position I won't  
2 go.

3                   **(Pause)**

4                   **THE COURT:** But then I don't want to hear slow  
5 walking because I'm not there, because a problem has occurred,  
6 so.

7                   **(Pause)**

8                   **THE COURT:** We're back on the record. And, Brad, I  
9 think I've got as good an answer as I can give you to your  
10 question.

11                   **MR. ROSENBERG:** Oh, okay, thank you.

12                   **THE COURT:** Okay. I'm simply going to refer you back  
13 to Docket 386. I'm going to refer you to the second paragraph,  
14 the third line from the bottom, "this use/temporary lease shall  
15 extend no later than July 4th, 2025." That's the wording I  
16 used with the UCLA. That's the best wording I can give you,  
17 okay. If you want to construct something else for my  
18 consideration, so be it.

19                   **MR. ROSENBERG:** Can you just repeat that?

20                   **THE COURT:** I'm just going to give it to you. Yeah,  
21 nice and easy.

22                   Okay. Now, can we get out there before midnight?

23                   **MR. SILBERFELD:** We think it's probably better to  
24 postpone and for this reason. We are going to work together to  
25 decide the buildings that the plaintiffs think should be



1 demolished, the ones where we agree they can be demolished for  
2 the placement of permanent supportive housing and we need  
3 people available, which we don't have this afternoon with keys  
4 and access.

5 **THE COURT:** Okay. When will that take place?

6 **MR. SILBERFELD:** We're proposing next Wednesday if  
7 the Court is available after our hearing in the morning,  
8 assuming it's in the morning. I don't even know when it is  
9 exactly.

10 **THE COURT:** Well, we've got a lot to cover tomorrow  
11 in terms of a possible fairness hearing or maybe not --

12 **MR. SILBERFELD:** Yes.

13 **THE COURT:** -- depending upon what Brentwood decides.  
14 We've got the emergency stay to be argued.

15 **MR. SILBERFELD:** Yes.

16 **THE COURT:** We've got intervention.

17 **MR. SILBERFELD:** Yes.

18 **THE COURT:** We've got administrative stay. Okay.  
19 Well, we'll do our best. If you want to do it next Wednesday  
20 afternoon we'll decide.

21 **MR. SILBERFELD:** All right. And --

22 **THE COURT:** Is that better for you, Chelsea, Rob?  
23 You folks? Okay. Better for you, Ramon?

24 **MR. SILBERFELD:** It's fine for us.

25 **THE COURT:** Okay. Then we'll take next Wednesday

1 afternoon.

2 **MR. SILBERFELD:** Do we have a time for the hearings  
3 in the morning? I don't think the Court --

4 **THE COURT:** The earlier we start the better. I'd  
5 like to start as early as possible --

6 **MR. SILBERFELD:** 8 a.m. is fine with us.

7 **THE COURT:** -- just so we can get out there. Can we  
8 say 8 o'clock?

9 **MR. SILBERFELD:** 8 a.m.

10 **THE COURT:** 8 a.m.?

11 **MR. SILBERFELD:** Yep.

12 **THE COURT:** Brad?

13 **MR. ROSENBERG:** Agreed.

14 **THE COURT:** Cody? All right. Counsel.

15 **MR. SANDLER:** Thank you, Your Honor, Jonathan Sandler  
16 for Brentwood.

17 Your Honor, just to be clear, Brentwood does want the  
18 fairness hearing to go forward on the 13th.

19 **THE COURT:** I'm sorry?

20 **MR. SANDLER:** We do want the fairness hearing to go  
21 forward on the 13th --

22 **THE COURT:** Okay.

23 **MR. SANDLER:** -- regardless of how the Court rules on  
24 the motion to intervene.

25 **THE COURT:** Okay. Well I may be making that ruling

1 on that day also. Let me -- in other words, I need to absorb a  
2 lot of the documents you've been filing, you know, very  
3 recently.

4 Okay. So then we're postponing this.

5 **MR. SILBERFELD:** Yes.

6 **THE COURT:** Well then wish all of you the best, we'll  
7 see you on the 13th. Okay?

8 **MR. SILBERFELD:** Thank you, Your Honor.

9 **THE COURT:** Dr. Sharon, you might be present also on  
10 the 13th.

11 **(Proceedings concluded at 1:43 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



November 8, 2024

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Signed

Dated

*TONI HUDSON, TRANSCRIBER*