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

JEFFREY POWERS, et al.,	)	Case No. CV 22-8357-DOC (KSx)
	)	
Plaintiffs,	)	Los Angeles, California
	)	Tuesday, May 2, 2024
v.	)	11:14 A.M. to 11:39 A.M.
	)	1:00 P.M. to 1:40 P.M.
DENIS RICHARD MC DONOUGH,	)	1:45 P.M. to 1:48 P.M.
et al.,	)	
	)	
Defendants.	)	
	)	

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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE DAVID O. CARTER  
UNITED STATES DISTRICT JUDGE

Appearances:	See Page 2
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1        LOS ANGELES, CALIFORNIA, TUESDAY, MAY 2, 2024, 11:14 A.M.

2                THE COURT: Counsel, first of all, pardon the  
3 informality, but good morning, and this is the matter of  
4 *Powers v. McDonough*. It's case No. 22-08357, and as a  
5 courtesy -- are we on CourtSmart today?

6                Is it operating?

7                All right. Then, counsel, if you can just remain  
8 seated. Would you make your appearances, please.

9                ROMAN M. SILBERFELD: Good morning, Your Honor.  
10 Roman Silberfeld, Robins Kaplan for the plaintiffs.

11                THE COURT: Pleasure.

12                TOMMY H. DU: Good morning, Your Honor. Tommy Du  
13 on behalf of plaintiffs.

14                THE COURT: Pleasure.

15                MARK D. ROSENBAUM: Good morning, Your Honor.  
16 Mark Rosenbaum from Public Counsel on behalf of plaintiffs

17                THE COURT: Pleasure.

18                BRAD P. ROSENBERG: Good morning, Your Honor.  
19 Brad Rosenberg from the Department of Justice Civil Division,  
20 Federal Programs Branch --

21                THE COURT: Pleasure.

22                MR. ROSENBERG: -- on behalf of the federal  
23 defendants. With me at counsels' table is Taylor Pitz.

24                THE COURT: Nice seeing you.

25                MR. ROSENBERG: Ms. Pitz will be taking the lead on

1 the oral argument in the motion for class certification  
2 today.

3 THE COURT: All right. Please?

4 MR. ROSENBERG: Also with me, as you know, is  
5 Cody Knapp --

6 THE COURT: Nice seeing you.

7 MR. ROSENBERG: -- from the Civil Division, and  
8 then in the gallery we have Jody Lowenstein, Carlotta Wells,  
9 and Agbeko Petty.

10 THE COURT: All right. Thank you. It's nice  
11 seeing all of you.

12 ERNEST J. GUADIANA: And good morning, Your Honor.  
13 Ernest Guadiana on behalf of the Intervenor Bridgeland  
14 Resources.

15 THE COURT: Oh, my apologies.

16 MR. GUADIANA: I'm here too.

17 THE COURT: It's good to see you.

18 And, counsel, this is a motion to certify the  
19 class, and there will be two rounds initially, and then I  
20 have a tentative that I choose not to hand out to you. I  
21 want to listen to your arguments fresh, see if I still feel  
22 strongly about the tentative. I'm going to give that to you  
23 in a few moments after your initial arguments and then let  
24 you argue from that as well.

25 So, Counsel, your motion?

1 MR. SILBERFELD: Good morning, Your Honor. Thank  
2 you.

3 THE COURT: Good morning.

4 MR. SILBERFELD: I know that the Court is well  
5 familiar with the history here, but in brief, the history is  
6 that the West Los Angeles VA property was deeded to the  
7 Government as a charitable trust as a soldiers' home for  
8 disabled soldiers. It operated that way for about 80 years,  
9 and then in the 1960s that all changed. That change of use  
10 of the property resulted in virtually no one living on that  
11 property for the next 60 years, until about the 2010s or so.  
12 After that, the West Los Angeles Leasing Act of 2016 was  
13 enacted, which attempted to restate the original purpose of  
14 the property to be used principally to benefit veterans and  
15 to provide housing and associated services to the veteran  
16 community and particularly to homeless veterans. The Court  
17 is well familiar with what a serious problem homelessness  
18 among veterans is in this community.

19 And this isn't the first time that litigation has  
20 been brought about this. The Court is familiar with the  
21 *Valentini* case that resulted in a consensual settlement  
22 without any enforcement mechanism in 2015 with a promise from  
23 the Government to construct 1,200 housing units within a  
24 6-year period, and by 2022, at the end of that 6-year term,  
25 no one had been housed in new housing on the VA property, and

1 the Office of Inspector General of the VA so found in 2021.

2           So we're here again. This lawsuit was filed in  
3 '22, and we are here to seek the very kind of redress on  
4 behalf of homeless veterans that was promised in 2015 but not  
5 delivered and that, by the VA's own estimates, won't be  
6 delivered, at least as to the 1,200 units, until at least  
7 2030. And our view is, Your Honor, candidly, time is up.  
8 Something needs to be done and something needs to be done now  
9 to assist the veterans that are so desperately in need of the  
10 services to which they're entitled, their disability benefits  
11 and the reasonable access to those services through housing  
12 and support services that are not being provided now.

13           So the claim here is an across-the-board claim  
14 common to all unhoused veterans who have disabilities, and  
15 what we seek that is common to all those individuals is  
16 redress for the failure to provide reasonable access and  
17 accommodation to the services to which these people are  
18 entitled, which includes, as I mentioned, housing, support  
19 services, case worker services, to ensure that people don't  
20 fall out of the system once they're in housing, whether it's  
21 on campus or in the community.

22           We seek across the board a referral system that  
23 actually works because what we understand now is that the  
24 voucher system that is in existence in Los Angeles that  
25 relies on the public housing agencies to administer them --

1 that system only works if the VA in fact refers individuals  
2 to those housing agencies, and records have been kept since  
3 2008 about the extent of referrals. And the housing agencies  
4 all have target figures of the referrals that they seek to be  
5 able to use the vouchers that they have available from HUD,  
6 and in only 2 years, in 2014 and '15, of the, you know,  
7 16 years that records have been kept has the Veterans  
8 Administration actually referred a sufficient number of  
9 people to HUD and to the public housing -- through HUD to the  
10 housing agencies in order to fill up the use of the vouchers.  
11 Historically, the voucher usage in this community is in the  
12 55 percent range, and that's just insufficient. That is not  
13 helping address the problems here at all.

14           But these are only part of the common claims that  
15 we are seeking relief for, for the class. In addition, the  
16 breach of fiduciary duty claim is common to the entire group  
17 of homeless veterans that we seek to represent. We seek  
18 declarations about the leases on the property that the Office  
19 of Inspector General of the VA has found are illegal leases,  
20 and these are all, you know, common questions that we think  
21 justify class certification and class treatment.

22           We think we meet each and all of the requirements  
23 of Rule 23(a). Numerosity -- there's thousands of veterans  
24 who are homeless, and to the extent that there are -- the  
25 class is limited to those with serious mental illness or



1 traumatic brain injury, there are statistics about that, and  
2 the numbers vary. The case law says we don't have to have an  
3 exact number of the class to be able to satisfy the  
4 numerosity prong, but there are certainly hundreds of people  
5 who have serious traumatic brain injury and serious mental  
6 illness in the group of homeless veterans that ranges  
7 somewhere between 2,200 by one count and almost 4,000 by  
8 another count. So we think numerosity is satisfied.

9 I think the place that maybe there is a  
10 disagreement here has to do with whether there are, you know,  
11 common questions of law or fact, and I've identified some of  
12 them, but I think the difference here is that the individual  
13 plaintiffs may have unique circumstances, and the absent  
14 class members will all have individual circumstances, but the  
15 real question on commonality is whether or not the injury  
16 that the class members have suffered is a result of the same  
17 course of conduct, and that's in the *Hanon* case, which is  
18 found at page 30 of our opening brief. The same sort of  
19 conduct that I've described is applicable to the entire  
20 class. We have never said, nor are we saying now, that the  
21 Federal Government or the federal defendants have singled out  
22 a particular plaintiff or a particular group of plaintiffs  
23 for mistreatment. Instead, we say that the policy and the  
24 practices that are in place are uniformly causing harm to the  
25 entire class.

1           There is -- pardon me.

2           There is mention in the papers on both sides about  
3 whether or not the fact that certain plaintiffs are now  
4 housed means that their claims are moot or that they're not  
5 suitable as class plaintiffs. This came up, actually, in the  
6 motion to dismiss, phase two, as to Mr. Johnson, who is one  
7 of the class representatives that we seek his approval of.  
8 Where that has happened -- and it has happened as to six of  
9 the class representatives that we seek to have certified as  
10 class reps. Where that has happened, it has happened because  
11 the Government has chosen to put those people in housing on  
12 the campus as to some, not on the campus as to two.

13           But that is not the final answer as to mootness,  
14 and the Court has already addressed this, as I say, as to Mr.  
15 Johnson when the Court found that their homelessness is  
16 capable of repetition, and the solution that has been  
17 proposed has not been proposed long enough to be able to say  
18 with confidence that homelessness will not reoccur as to  
19 these individuals. The statistics from the VA itself are  
20 that about 20 percent of people who are housed after being  
21 homeless revert to homelessness at some point again in the  
22 future, and so I don't think mootness is an issue here at  
23 all, but even if it were as to one or more of the individual  
24 plaintiffs, the institutional plaintiff, the National  
25 Veterans Foundation, has institutional standing on behalf of

1 its -- pardon me -- its members, who are homeless veterans,  
2 and part of the obligation of the National Veterans  
3 Foundation is to try to prevent suicide among homeless  
4 veterans in our community.

5 As to the 23(b)(2) prong, which is the injunctive  
6 and declaratory relief prong, as I said when I described the  
7 claims that we seek redress of, each and all of those are  
8 virtually, by definition, common issues which are capable of  
9 being adjudicated on a class-wide basis.

10 And so with all of that, we think that class  
11 certification is completely proper. I've prepared a chart as  
12 to certain of the plaintiffs who were in the original motion,  
13 but two of those we would like to defer a ruling on with  
14 respect to their class representative status. I provided  
15 this to counsel just before the hearing started, and I can  
16 hand this up at the appropriate time, but we seek class  
17 certification as to seven of the nine original individuals,  
18 and I can explain why either now or at a later time.

19 THE COURT: Okay.

20 MR. SILBERFELD: With that, I'll submit.

21 THE COURT: All right. Thank you.

22 Counsel, your opening then? And then I'll  
23 distribute a tentative.

24 TAYLOR PITZ: Good morning, Your Honor.

25 THE COURT: Good morning.

1 MS. PITZ: May it please the Court.

2 Plaintiffs seek to certify a class of all homeless  
3 veterans with serious --

4 THE COURT: Pull that a little bit closer. Your  
5 voice is a little quieter.

6 MS. PITZ: Is that better?

7 THE COURT: That's much better. Thank you so much.

8 MS. PITZ: Okay. Thank you.

9 THE COURT: And we have CourtSmart, also, that  
10 needs to pick up your voice.

11 MS. PITZ: Okay.

12 THE COURT: Okay. Thank you.

13 MS. PITZ: I'll try to speak clearly.

14 Good morning.

15 Plaintiffs seek to certify a class of all homeless  
16 veterans with serious mental illness or traumatic brain  
17 injury who reside in Los Angeles County. While plaintiffs'  
18 arguments today and briefing has focused on the history of  
19 this action, for purposes of this motion, the relevant  
20 inquiry is what's provided for under rule -- Federal Rule of  
21 Civil Procedure 23, and plaintiffs have failed to carry their  
22 burden to satisfy each requirement set forth by that rule by  
23 a preponderance of the evidence. Most notably, plaintiffs  
24 have failed to allege common injuries, their class  
25 representatives are not typical of the class, and they're not

1 adequate representatives. Further, the federal defendants'  
2 position is that plaintiffs' proposed class is overbroad and  
3 inadequately defined. Accordingly, the federal defendants  
4 ask that the Court decline to certify plaintiffs' proposed  
5 class today.

6           Turning to commonality, to satisfy the commonality  
7 inquiry, it's not enough to demonstrate that plaintiffs may  
8 have suffered from a similar violation of law. The focus for  
9 the Court is whether or not plaintiffs have submitted that  
10 they have suffered from common injuries, and it's evident  
11 across the class, as demonstrated through the briefing and  
12 based on some of the materials provided today, the full range  
13 -- although the named plaintiffs in this action -- it seems  
14 most are in permanent housing --

15           (Pause.)

16           MS. PITZ: -- are in permanent housing already,  
17 they seek to represent a class encompassing the full range of  
18 housing experiences that people are negotiating. So this  
19 encompasses veterans housed on the West Los Angeles grounds  
20 in permanent supportive housing. It also involves veterans  
21 who may be housed in permanent supportive housing throughout  
22 Los Angeles County, those who are housed in permanent housing  
23 across Los Angeles County, as well as those who may be in  
24 transitional or emergency housing and those are -- those who  
25 are unsheltered. These injuries are quite varied and are not

1 capable of being redressed by a common injunction here.

2           Additionally, a number of the individual  
3 plaintiffs' circumstances highlight key differences between  
4 the putative class members. For instance, some members may  
5 have been offered housing but have declined that housing for  
6 various reasons. Some members may have applied for  
7 particular types of housing and been denied that housing --  
8 or have not applied for that housing at all -- excuse me --  
9 and yet still other members may be independently barred from  
10 receiving certain benefits. The bottom line is that  
11 plaintiffs' housing status and any corresponding grievances  
12 are extremely varied, and they don't share common injuries  
13 capable of class-wide resolution.

14           Turning to plaintiffs' particular claims, those,  
15 likewise, are not capable of being resolved through common  
16 answers. In particular, plaintiffs have brought a number of  
17 claims under the Rehabilitation Act. Those claims turn on  
18 very facts -- fact-specific inquiries, for instance, whether  
19 or not an accommodation is reasonable and whether an  
20 accommodation is necessary for a plaintiff to access  
21 particular benefits.

22           Although plaintiffs cite a number of briefs in  
23 their case, most of those cases involve classes that don't  
24 deal with Rehabilitation Act claims and are suited to simpler  
25 legal inquiries. Additionally, the cases that plaintiffs

1 have cited where Rehabilitation Act classes have been  
2 certified have dealt with significantly simpler factual  
3 inquiries than those we're dealing with here in this case.  
4 Importantly, veterans are not a monolith, and what type of  
5 housing and support services are necessary and reasonable for  
6 people to access their benefits is much more fact specific  
7 than other particular Rehab Act claims that may be  
8 represented in the cases that plaintiffs have cited.

9           Plaintiffs have also brought an *Olmstead* claim  
10 regarding whether or not defendants are administering  
11 benefits in the most integrated setting appropriate, but  
12 again, this is a fact-specific inquiry. What's the most  
13 integrated setting appropriate is a highly individualized  
14 determination, and while some plaintiffs and some veterans  
15 may seek housing on the West Los Angeles grounds, others  
16 might prefer to be housed in the community, and that would be  
17 the most integrated setting appropriate.

18           Additionally, turning to typicality, it's important  
19 to note that currently, as represented here today, all of  
20 plaintiffs' proposed class representatives are in permanent  
21 housing. This renders them not typical of the class as  
22 they're subject to unique defenses. As counsel has  
23 highlighted, it is likely -- well --

24           (Pause.)

25           MS. PITZ: Our counsel today has noted that they --

1 plaintiffs' position is that these plaintiffs may be  
2 susceptible to becoming homeless once again and that these --  
3 that their claims may be capable of repetition but evading  
4 review. The Government disagrees with that position.  
5 Although plaintiffs cite the 20 percent figure of veterans  
6 who fall back into homelessness, VA statistics actually  
7 represent that number is much closer to 5 percent, and VA has  
8 been able to meet its goal of holding that number to  
9 5 percent, and nationwide in the, I believe, last year, the  
10 number of veterans who fell back into homelessness was only  
11 3.8 percent. This is insufficient to establish a substantial  
12 likelihood that the plaintiffs housed in permanent housing,  
13 particularly on the West L.A. grounds, are likely to  
14 experience homelessness once again.

15           Additionally, we would highlight that the  
16 plaintiffs that are housed on the West L.A. grounds and those  
17 in the HUD VASH program receive supportive services that are  
18 key to helping them maintain stable housing and medical  
19 situation. These services include case management support to  
20 assist them in satisfying the requirements for the program --  
21 staying on top of paperwork -- things like that -- to ensure  
22 that they're able to remain in a stable housing environment.

23           Additionally, other plaintiffs may not be typical  
24 as well. As we've highlighted, some of the plaintiffs in  
25 this action may independently not be eligible for the relief



1 sought. For instance, Mr. Stibbie may not be eligible for  
2 federal housing assistance.

3 (Pause.)

4 MS. PITZ: Additionally, as highlighted in our  
5 brief, defendants' position is that these plaintiffs are not  
6 adequate class representatives. Plaintiffs have chosen to  
7 pursue litigation as their means for effecting change on the  
8 West Los Angeles grounds, but this means they must be  
9 adequate litigants. There was extensive veteran involvement  
10 and public participation in the development of the 2016 and  
11 2022 master plans. There is still a constant and ongoing  
12 dialogue on the campus with veterans who are housed there  
13 with regards to how the campus was developed and managed and  
14 what services are provided. In other words, there are other  
15 avenues for veterans to participate and reflect or express  
16 their views as to what needs to be happened to meet their  
17 needs, but these plaintiffs have chosen to pursue litigation.  
18 This means it's extremely important that they be adequate  
19 class representatives if they're going to impose their views  
20 over those who might participate in the system through  
21 various other means.

22 Finally, we submit that plaintiffs' proposed class  
23 is overbroad and inadequately defined. The Government is  
24 most concerned with the fact that the class -- that although  
25 much of plaintiffs' First Amended Complaint and this Court's

1 decision denying defendants' motion to dismiss is premised on  
2 the notion that plaintiffs are otherwise eligible for federal  
3 housing and health care benefits, but there's no such  
4 eligibility criteria contained within the definition of the  
5 proposed class.

6           Additionally, we'd highlight that the term  
7 "veteran" is undefined, and although that term has a  
8 colloquial meaning, there are regulations that define that  
9 term that are relevant to the benefits at issue in this case,  
10 and we would advise the Court to consider adopting that term  
11 as defined by regulation.

12           Additionally, plaintiffs have included just the  
13 phrase "homeless." In their reply they've clarified that  
14 "homeless" indicates a veteran who has been or remains  
15 unhoused or is at risk of becoming unhoused. "Homeless" is a  
16 term that also has a regulatory definition that's employed in  
17 VA's administration of its benefits, and we would advise the  
18 Court to adopt that regulatory definition to provide further  
19 parameters on the class if any class were to be certified.

20           Additionally, the Government is concerned with the  
21 inclusion of SMI and TBIs -- a serious mental illness or  
22 traumatic brain injury. In particular, both terms are quite  
23 vague, but there is the question of who makes the  
24 determination as to whether or not a veteran has a serious  
25 mental illness or suffers a traumatic brain injury. Is that

1 provided for by medical records? Does VA make that  
2 determination? It's not clear through plaintiffs' proposed  
3 class.

4 So in sum, we would ask that the Court decline to  
5 certify the class that plaintiffs have proposed.

6 THE COURT: All right. Thank you.

7 I want to distribute a tentative to you for a  
8 moment. We've got some extra copies, also. And my thought  
9 is this: Instead of responding immediately to each other's  
10 arguments and in light of having this tentative that you can  
11 argue from, which are my initial thoughts concerning this  
12 matter, why don't you take the lunch hour, and let's come  
13 back at either 12:30 or 1:00 o'clock so you can absorb that  
14 and be prepared. It's about 15 pages in length. And so why  
15 don't we agree to meet at 1:00 o'clock so you can have some  
16 lunch, absorb the tentative, think about each other's  
17 arguments, and then we'll hear your rebuttal arguments.  
18 Okay. So we'll see you at 1:00 o'clock.

19 MR. SILBERFELD: Thank you, Your Honor.

20 MR. ROSENBERG: Thank you, Your Honor.

21 (Recess from 11:39 a.m. to 1:00 p.m.)  
22

23 AFTER RECESS

24 THE COURT: All right. Then we're back on the  
25 record. All counsel are present.

1           And I want to apologize to the intervenor in this  
2 matter. Do you have any comments you'd like to make in this  
3 opening round?

4           MR. GUADIANA: No, Your Honor.

5           THE COURT: All right. Then, Counsel, you've  
6 received a tentative. I've heard your opening. You have  
7 wide latitude. Your response, please?

8           MR. SILBERFELD: Your Honor, we'll submit on the  
9 tentative with one clarification, if we may, and that is --  
10 and we've discussed this with counsel for the Government. We  
11 wish to withdraw Mr. Sammy Castellanos as a class  
12 representative.

13           THE COURT: Acceptable to all parties?

14           MS. PITZ: Acceptable to us.

15           THE COURT: All right. He's withdrawn at this  
16 time, Counsel.

17           MR. SILBERFELD: Other than that, we submit on the  
18 tentative, Your Honor.

19           THE COURT: All right.

20           Then, Counsel? Let me turn to the Government.

21           MS. PITZ: Thank you, Your Honor.

22           THE COURT: And, Counsel, there's no chilling  
23 effect. I want you to tell me why this is wrong. I want you  
24 to tell me vigorously why you disagree. So please?

25           MS. PITZ: Okay.

1           Turning to my first point -- well, first, I would  
2 just like to say that we -- respectfully, we disagree with  
3 the tentative in its entirety, and although we intend to  
4 highlight a few points here today --

5           THE COURT: Okay.

6           MS. PITZ: -- for the record, we don't waive any of  
7 the arguments made in our brief or in presentation earlier  
8 today.

9           THE COURT: All right. But you have wide latitude  
10 on the response. There's no time period, and I don't mind  
11 the passion and vigor. So please?

12           MS. PITZ: Thank you.

13           Plaintiffs' proposed class representatives are the  
14 definition of atypical. As demonstrated by the chart  
15 plaintiffs have provided today, all of their class  
16 representatives are in permanent supportive housing or  
17 permanent housing in Los Angeles. That is the exact remedy  
18 they seek in support of their claims in response to this  
19 action. And they're purporting to represent a class of  
20 unhoused veterans, but they have the remedy that they seek.  
21 It's hard to understand how any proposed class representative  
22 would even benefit from this Court -- if this Court were to  
23 order the injunction sought in this case.

24           Second, although Your Honor addressed the "capable  
25 of repetition but evading review" standard at the motion to

1 dismiss phase, we are approaching trial, and that standard  
2 looks different. And if anything, the fact that plaintiffs  
3 who have been placed in permanent supportive housing have  
4 been in that housing for a year or approaching a year and  
5 have been able to maintain that housing underscores the  
6 statistics that the VA cited earlier, that permanent  
7 supportive housing, as plaintiffs' counsel eloquently  
8 mentioned, helps keep people in housing. There's a reason  
9 why folks want permanent supportive housing. The services  
10 help ensure that people do not fall out of homelessness, and  
11 so that substantially reduces the likelihood that any of the  
12 plaintiffs here today -- or, not here today -- but in this  
13 action are likely to become homeless again.

14           We also take issue with the tentative's proposed  
15 class definition. First, just as a little bit of a  
16 housekeeping matter, although it cites to the definitions  
17 with -- included within plaintiffs' briefing, those  
18 definitions are not included in plaintiffs' actual proposed  
19 class, and the tentative itself doesn't contain a proposed  
20 class, and so to the extent the Court looks to those  
21 definitions, they must be provided within the actual  
22 definition.

23           Additionally, defendants can't begin to understand  
24 the scope of the class proposed. If the term "homeless  
25 veteran" is found to encompass someone who is in permanent

1 supportive housing, the exact remedy they seek, the class is  
2 seemingly boundless. And without definitions regarding  
3 "serious mental illness" or "traumatic brain injury" and, in  
4 particular, who makes the determinations as to whether --  
5 whether or not someone has severe mental illness or traumatic  
6 brain injury, it's going to be really hard -- to the extent  
7 that this Court were to order an injunction, it's going to be  
8 nearly impossible for defendants to understand to whom it  
9 even applies.

10 THE COURT: If you're arguing about definitions  
11 concerning traumatic brain injury, for instance, or severe  
12 mental illness, then how does Government function at the  
13 present time because Government uses those very terms?

14 MS. PITZ: It uses those terms with regards to  
15 particular prioritizations, but I think there's a difference  
16 in terms of determining whether or not the Government is  
17 actually required and bound to provide a particular relief to  
18 someone. And certainly I believe the VA has looked to those  
19 terms within the context of, you know, clinical -- medical  
20 records -- things like that. That might be one option the  
21 Court might consider in deciding how to define a class is  
22 whether or not medical records or formal diagnosis is  
23 appropriate. But I think there is a distinction between  
24 looking to those factors for offering potential benefits  
25 versus actually requiring the Government to provide

1 particular forms of housing to people, and if a class is  
2 certified, that's something the Government would really need  
3 certainty regarding.

4           And lastly, we would just highlight that plaintiffs  
5 are challenging the barriers to the access of benefits, and  
6 so including some type of an eligibility criteria within the  
7 proposed class definition is very important. If the idea is  
8 that plaintiffs are facing barriers to accessing benefits,  
9 the benefit is a -- it's a prerequisite. It's -- it has to  
10 exist, and someone has to be eligible for those benefits for  
11 there to be any need for there to be an accommodation made,  
12 and so for that reason we would say the class definition must  
13 include some sort of eligibility reference with regards to  
14 either VA medical benefits and/or federal housing benefits.

15           And if Your Honor has no other questions --

16           THE COURT: I may in a moment, but there's going to  
17 be another round. So talk to your colleagues, and let me  
18 turn to the intervenor and then back for rebuttal, which I'm  
19 going to request just from the plaintiffs.

20           For the intervenor, do you have any comments you'd  
21 like to make?

22           MR. GUADIANA: No, Your Honor.

23           THE COURT: Okay. Back to the plaintiffs in this  
24 matter.

25           MR. SILBERFELD: Thank you, Your Honor.



1           Just limiting the remarks to counsel's argument,  
2 let me begin with the argument that these plaintiffs are  
3 currently housed. Over the lunch hour I got some information  
4 that five of the plaintiffs -- four of the plaintiffs have  
5 recently --

6           THE COURT: Counsel, excuse me just one moment.

7           (Court speaks with courthouse staff.)

8           THE COURT: Counsel, pardon the informality.

9           MR. SILBERFELD: Oh, no problem.

10          (Court speaks with courthouse staff.)

11          THE COURT: Okay. Counsel, please continue.

12          MR. SILBERFELD: I notice they don't have a hammer,  
13 though, Judge.

14          Four of the plaintiffs that are currently housed  
15 have received notification that they will no longer be  
16 housed. So this is a very fluid situation. This is  
17 something that is capable of repetition, as the Court noted  
18 in the tentative, and I don't think that's a reason to deny a  
19 class certification or not appoint these particular  
20 plaintiffs as --

21          THE COURT: Excuse me.

22          (Court speaks with courthouse staff.)

23          THE COURT: Thank you, Counsel.

24          MR. SILBERFELD: Sure.

25          (Court speaks with courthouse staff.)

1 MR. SILBERFELD: Counsel argued separately that  
2 were the Court to issue an injunction in this case they would  
3 not understand who that injunction might apply to.

4 THE COURT: But isn't that a remedy? In other  
5 words, if we get to that point --

6 MR. SILBERFELD: Sure.

7 THE COURT: -- then the Court's going to take input  
8 from both sides in terms of fashioning a remedy that's  
9 equitable and understandable. I'm hearing right now that the  
10 class is ill defined. I'm not hearing too much concern about  
11 numerosity right now, but I'll ask defense again. Common  
12 legal questions -- I've determined -- or tentatively  
13 determined that there are common issues of law here. So --

14 MR. SILBERFELD: Well, with regard to whether or  
15 not the class is poorly or well-defined, as the case may be,  
16 I want to advise the Court about something that the  
17 Government knows well, and that is, they maintain --

18 THE COURT: Just a little bit louder because we've  
19 got CourtSmart.

20 MR. SILBERFELD: Sure.

21 The Government maintains a list, Your Honor. That  
22 list is called the "By Name List," and it is --

23 THE COURT: The what?

24 MR. SILBERFELD: "By Name" --

25 THE COURT: "By Name"?

1 MR. SILBERFELD: -- "List" --

2 THE COURT: Spell that for me.

3 MR. SILBERFELD: First word is B-y. Second word is  
4 Name, N-a-m-e.

5 THE COURT: N-a-m-e. Okay.

6 MR. SILBERFELD: And then "List."

7 The "By Name List" is maintained by an individual  
8 named Sally Hammitt at the West L.A. VA. That list tells the  
9 VA who is homeless, roughly where they are, and what their  
10 disability is. So the Government knows well exactly who the  
11 members of this class are. In fact, there are two lists.  
12 One is maintained by the VA, has about 1,400 names on it, and  
13 the other list is maintained by the Los Angeles Homeless  
14 Services Authority. That has a separate number of about 800  
15 or 900 individuals on it. So there is --

16 THE COURT: Just one moment.

17 MR. SILBERFELD: Sure.

18 (Court speaks with courthouse staff.)

19 THE COURT: Counsel, please?

20 MR. SILBERFELD: So there's no surprise here about  
21 who the homeless veterans are that have disabilities that are  
22 members of this class. That's a list that is maintained by  
23 the VA and by the Homeless Services Authority of the City of  
24 Los Angeles.

25 And lastly, with regard to the argument about

1 eligibility and the lack of definition of certain terms, I  
2 think that's either something the Court can take up in the  
3 remedy phase, or the class definition is limited, as it is  
4 already, to individuals with traumatic brain injury or  
5 serious mental illness.

6 THE COURT: What about the argument that "severe  
7 mental illness" is not well defined for the class nor is  
8 "traumatic brain injury," and yet these are the very terms  
9 that the Government uses, and everybody seemingly seems to  
10 agree on whatever those terms are, although now the  
11 Government argues that they're nebulous. I'm curious about  
12 your argument concerning how well defined "severe mental  
13 illness" is or "traumatic brain injury."

14 MR. SILBERFELD: I think that it's a function of  
15 expert testimony, candidly. To the extent that there are  
16 known definitions that are used --

17 (Court speaks with courthouse staff.)

18 MR. SILBERFELD: -- to make disability  
19 determinations at the VA now, we may well simply adopt those  
20 so that there's no more issue about this.

21 THE COURT: Well, does the VA have a definition at  
22 the present time? And I'm throwing that out to both counsel.  
23 The VA, especially with military combatants, deals with,  
24 certainly, traumatic brain injury. That's a product  
25 increasingly of IEDs from the Afghanistan and Iraq conflict.

1           What's the definition of the VA -- from the VA,  
2 when you get up and argue, for "severe mental illness" or  
3 "traumatic brain injury"? Because those are used all the  
4 time, and if they're not well defined by the VA, then I'm  
5 concerned that that's an argument that, on one hand, you're  
6 proposing that we use those labels for the VA purpose of  
7 treatment but here for class action purposes the Court's to  
8 disregard them. So help me if we have a definition so far,  
9 and if not, then maybe we're left with these broad terms of  
10 "severe mental illness" and "traumatic brain injury" to  
11 wrestle with.

12           So, Counsel, do you have any concerns about  
13 numerosity? I didn't hear an argument about numerosity.

14           MR. SILBERFELD: I have no concerns about that,  
15 Your Honor.

16           THE COURT: Okay. Let me turn back to you, and  
17 talk to each other for just a moment. You know my concern.  
18 Okay?

19           (Pause.)

20           THE COURT: And remember, the Government uses these  
21 all the time. Wounded Warriors, VA -- they use them for  
22 benefits, percentages coming out of the VA. And if we're  
23 using those terms, and the Government has historically used  
24 those terms, then it's hard to understand how you say those  
25 terms aren't well defined. And they may not be well defined.

1 And take your time.

2 Folks, if you want to participate, come on up.

3 There's -- I'm very informal about that.

4 MR. ROSENBERG: One moment, Your Honor. We're --  
5 just want to have a brief colloquy.

6 THE COURT: Yeah. And take your time. Please.

7 (Pause.)

8 THE COURT: Okay. Had enough time?

9 MR. ROSENBERG: Yes.

10 THE COURT: Please?

11 MS. PITZ: Yes. So going back to the -- counsel's  
12 initial remarks, defendants have no idea with regards to the  
13 current housing status of plaintiffs in this action.

14 THE COURT: Say that again a little bit louder.

15 MS. PITZ: Okay.

16 THE COURT: Yeah. My apologies. It's me. It's --

17 MS. PITZ: We are -- we have not been made aware  
18 whatsoever with regards to any changes of the housing status  
19 of any of the named plaintiffs in this action. So we are not  
20 aware at all --

21 THE COURT: I see.

22 MS. PITZ: -- of what counsel is referring to on  
23 that.

24 With regards to the "By Name List," VA does not  
25 maintain that list. LAHSA does -- a local organization.

1 THE COURT: Excuse me. LAHSA does?

2 MS. PITZ: Yes. That's what LAHSA --

3 THE COURT: Well, they'll be here at 2:00 o'clock.  
4 Okay? And I'm just joking with you, but they're back in the  
5 back room right now.

6 They maintain that list. Why doesn't the VA? In  
7 other words, you have what I'm going to call the "VASH."  
8 Okay? They have a different level --

9 (Court confers with parties on a different matter.)

10 THE COURT: Why would the -- LAHSA have this list,  
11 as opposed to the Veterans Administration? In other words,  
12 you work through HUD. LAHSA gets much of its money through  
13 HUD, I understand that, but why doesn't the Veterans  
14 Administration maintain this list? You did at one time. Why  
15 not now?

16 MS. PITZ: I believe my --

17 THE COURT: No. Go over and talk to them first.  
18 Don't -- you know, don't put yourself in a position of sole  
19 responsibility here.

20 And, folks, you can argue. Different folks can  
21 come up with that answer. You're not confined to one person  
22 making that argument. Okay?

23 CODY T. KNAPP: So, Your Honor, Cody Knapp for the  
24 Government. I'm just going to step in on this point because  
25 I might be able to clarify --

1 THE COURT: Sure.

2 MR. KNAPP: -- some of these issues about the  
3 "By Name List."

4 The "By Name List" encompasses a larger population.  
5 So it's not just about veterans. It is contributed to by  
6 organizations --

7 THE COURT: Sure.

8 MR. KNAPP: -- LAHSA -- other service organizations  
9 within the community.

10 THE COURT: But in that list, as I understand it,  
11 we uniquely, also, had a pretty good count of our veterans.

12 MR. KNAPP: So that's part of the second list that  
13 was referred to that -- I believe plaintiffs understand it to  
14 be a "By Name List," although I don't think it meets the  
15 typical qualifications of that term. It's not something that  
16 was actively maintained. In fact, it was just an  
17 investigation that was done to see whether there were  
18 individuals that VA was aware of -- through its provision of  
19 medical services or otherwise had become aware of as, you  
20 know, we know that they are or have been unhoused for some  
21 period of time, but they don't appear on LAHSA's "By Name  
22 List," for whatever reason. They haven't presented to  
23 homeless services organizations and then been added to that  
24 list as it's maintained by LAHSA. It's not a list in the  
25 sense of a "By Name List," that it's actively updated.



1           THE COURT: But you're the United States  
2 Government. You have this unique relationship, as the  
3 Government, with HUD, which is also the Government. LAHSA is  
4 not a federal agency. LAHSA is self-created between the  
5 City and the County, probably to stop the bickering, which  
6 was well-known -- the Los Angeles Times editorials about the  
7 acrimony between the City and the County. This was formed,  
8 probably, as a political expedient. It, quite frankly, took  
9 responsibility for decision-making away from the Council and  
10 the Board and placed it in this -- what I've called the  
11 "Pillsbury Dough Boy." And at the same time, it absolved a  
12 lot of people decision-making because they could point to  
13 LAHSA; yet LAHSA was in the unfair position of not having  
14 any, you know, power -- the perfect circle of  
15 nonresponsibility, quite frankly, for Government.

16           LAHSA is not you, and you are not LAHSA. So why  
17 does LAHSA keep track of our veterans?

18           MR. KNAPP: So, Your Honor, I think this gets to  
19 the way that services are -- and housing in particular --

20           THE COURT: A little louder.

21           MR. KNAPP: Services and housing, in particular,  
22 are typically provided to individuals. Those typically are  
23 done by public housing authorities, which are state, local  
24 entities, and they service --

25           THE COURT: So Federal Government is relying upon

1 on local government?

2 MR. KNAPP: In some ways. We're in partnership.

3 THE COURT: Sure. And in a sense that makes sense  
4 to me also, so you know that, because HUD, in a sense, is  
5 transferring money also into LAHSA for local benefit because  
6 the local folks may know, you know, their population much  
7 better. I can accept that.

8 MR. KNAPP: And I think the reason that it makes  
9 sense that LAHSA maintains this list is because, for  
10 instance, the VA is focused on a much more targeted set of  
11 unhoused individuals, people experiencing homelessness --  
12 veterans.

13 THE COURT: Is that the severe mentally disabled?  
14 What's our targeted list?

15 MR. KNAPP: Well, they're focused on servicing  
16 veterans experiencing homelessness.

17 THE COURT: Is it -- are they veterans with  
18 traumatic brain injury? Is that our targeted list?

19 MR. KNAPP: It's -- VA has not subdivided the list  
20 of unhoused --

21 THE COURT: What is our targeted list?

22 MR. KNAPP: Veterans experiencing homelessness.

23 THE COURT: So we have this broad "veterans  
24 experiencing homelessness" that we're targeting?

25 MR. KNAPP: Well, I'm saying that's who the VA

1 services as a subset of unhoused individuals within  
2 L.A. County

3 THE COURT: But when you're defining your circle of  
4 folks you're looking at -- veterans -- it's veterans  
5 experiencing homelessness?

6 MR. KNAPP: Correct. Yes.

7 THE COURT: And how do we define with that nebulous  
8 definition and argue that veterans with "severe mental  
9 illness" is not definable, when the Government uses those  
10 very terms, or "traumatic brain injury," and then argue that  
11 this isn't acceptable for class definition?

12 MR. KNAPP: So, Your Honor, I don't think that  
13 we're saying that it's undefinable. I think it's plaintiffs'  
14 burden to define the class that they're proposing for this  
15 Court, and the terms that they are using are subject to  
16 variation --

17 THE COURT: Okay.

18 MR. KNAPP: -- and they have not defined it in a  
19 way that -- you know, if an individual presents, the  
20 Government or even plaintiffs, you know, could look at that  
21 individual and their illnesses, such as they are, and  
22 determine whether they fall in or outside of the class.

23 I think the only point that I was trying to make  
24 earlier, though, is the reason it makes sense that LAHSA  
25 would maintain the "By Name List," as opposed to the VA, is

1 because LAHSA is servicing a larger circle of veterans.

2 THE COURT: Okay.

3 MR. KNAPP: It includes veterans experiencing  
4 homelessness, which are the ones that the VA is focused on,  
5 but also a larger circle.

6 THE COURT: But this class isn't -- they're not  
7 seeking a -- you know, this nebulous "homeless veterans."  
8 They seem to have narrowed that to traumatic brain injury and  
9 severe mental illness, and I keep coming back -- this is this  
10 broad cloud of just "homeless veterans." It's rather  
11 specific concerning "traumatic brain injury," which has to  
12 have a definition, which the Government has relied upon in  
13 the past and now claims that it's not definable, and "severe  
14 mental illness," which you relied upon in the past and now  
15 say it's not definable.

16 MR. KNAPP: I may turn this back to my colleague,  
17 but I do just want to say I don't think our position is that  
18 it's undefinable.

19 THE COURT: Okay.

20 MR. KNAPP: It's that it's plaintiffs' burden to  
21 propose a definition that defines the class with sufficient  
22 particularity that we can decide who --

23 THE COURT: In other words, you'll never use those  
24 terms again, then; is that right? I'm just joking with you.  
25 All right.

1 MR. KNAPP: But, yeah, it's their burden to define  
2 the class so that we know who falls in and who falls out, and  
3 they haven't done that here.

4 I'll turn it back to my colleague, Ms. Pitz.

5 THE COURT: Okay. And thank you very much. And by  
6 the way, come back any time that -- you give them permission  
7 to. Okay.

8 MS. PITZ: Thank you. We appreciate that.

9 Just to build a little bit on what my colleague was  
10 saying, I think -- the Government's concern is that  
11 plaintiffs' proposed class definition hasn't defined these  
12 terms. VA has definitions for these terms, but plaintiffs,  
13 in their briefing, have not adopted that definition. So,  
14 when they say "serious mental illness" or "traumatic brain  
15 injury," we just want the certainty that we are speaking  
16 about the same things and the same people. And so it's not  
17 that they can't be defined, even though there might be some  
18 difficulties there, but it's that plaintiffs' class, as they  
19 have defined it, does not adopt -- expressly adopt the  
20 Government's definition of those terms or any other  
21 definition that might provide some certainty.

22 THE COURT: Okay. Just consult with yourselves.  
23 There's one more round. Okay?

24 I want to hear from the plaintiffs.

25 MR. SILBERFELD: Your Honor, we'll adopt the

1 Government's definition that it uses for "traumatic brain  
2 injury" and "serious mental illness" --

3 THE COURT: Yeah.

4 MR. SILBERFELD: -- for making disability  
5 determinations.

6 THE COURT: I thought that was almost self-evident  
7 in the briefing, but I wasn't --

8 MR. SILBERFELD: That should sort of solve it, I  
9 would hope.

10 THE COURT: Yeah, I wasn't certain of that.

11 Counsel, your response?

12 MS. PITZ: In that case, I think that works for the  
13 Government.

14 Just as a matter of final housekeeping, unless  
15 there's anything else Your Honor has questions about --

16 THE COURT: No. Please?

17 MS. PITZ: We did want to make you aware that  
18 Steven Braverman -- Defendant Steven Braverman has been  
19 substituted by Robert Merchant, and Marcia Fudge has been  
20 substituted by Adrienne Todman. So that's just --

21 THE COURT: I'm sorry. I don't know -- I wasn't  
22 aware of that. And I apologize.

23 MS. PITZ: Oh, sure.

24 THE COURT: When did that occur? And I didn't see  
25 that, and I apologize to you.

1 (Counsel confer.)

2 THE COURT: Was it docketed? Did I read that  
3 someplace?

4 MS. PITZ: Oh, that's just -- you included those  
5 names on page 1 of your tentative.

6 THE COURT: Right.

7 MS. PITZ: And that's just been subsequent changes  
8 in staffing at VA and HUD. So Marcia Fudge is --

9 THE COURT: No. Just -- let me turn to that.  
10 That's confusing, and I apologize. It's my confusion.

11 Before the Court is Plaintiff Jeffrey Powers --  
12 still plaintiff?

13 MS. PITZ: Yes.

14 THE COURT: Okay. Deavin Sessom -- still  
15 plaintiff?

16 MR. SILBERFELD: Yes.

17 THE COURT: Laurieann Wright -- still the  
18 plaintiff?

19 MR. SILBERFELD: Yes.

20 THE COURT: Samuel Castellanos -- no longer a  
21 plaintiff --

22 MR. SILBERFELD: No longer.

23 THE COURT: -- by stipulation.

24 Joseph Fields -- still a plaintiff?

25 MR. SILBERFELD: Yes, Your Honor.

1 THE COURT: Lavon Johnson -- still a plaintiff?

2 MR. SILBERFELD: Yes.

3 THE COURT: Billy Edwards -- still a plaintiff?

4 MR. SILBERFELD: Yes.

5 THE COURT: Jessica Miles -- still a plaintiff?

6 MR. SILBERFELD: Yes.

7 THE COURT: Joshua Robert Petitt -- still a  
8 plaintiff?

9 MR. SILBERFELD: Yes.

10 THE COURT: Glenn Surette -- still a plaintiff?

11 MR. SILBERFELD: Yes.

12 THE COURT: Naryan Stibbie -- still a plaintiff?

13 MR. SILBERFELD: Yes.

14 THE COURT: Now, we've had quite a lot of briefing  
15 concerning Mr. Johnson. You know my thoughts and concerns  
16 about that in the tentative is I get concerned that the  
17 Government could cherry-pick, in a sense, those people who've  
18 gone into housing and thereby negate any class that they  
19 chose to. I'm not making that accusation that you've done  
20 that, but that's a very dangerous precedent.

21 Now, to defendants, let's go down to line 10.

22 Richard -- Denis Richard McDonough?

23 MS. PITZ: Yes. Still a defendant.

24 THE COURT: What about him?

25 (Pause.)



1 THE COURT: He's still?

2 MS. PITZ: I'm sorry?

3 THE COURT: Still a defendant?

4 MS. PITZ: Yes. He's still a defendant.

5 THE COURT: Okay. Steven Braverman -- still a  
6 defendant?

7 MS. PITZ: No. He is no longer still a defendant.  
8 That's where we've had the substitution.

9 THE COURT: Oh. Explain what happened. I don't  
10 understand it. I didn't have any notice before, I think,  
11 about this but -

12 MR. ROSENBERG: Yeah. Your Honor, at some point  
13 last year, when there's official capacity agency defendant,  
14 under Federal Rule of Civil Procedure 25(d), when they step  
15 down or move on to another position --

16 THE COURT: Has he moved on or stepped down?

17 MR. ROSENBERG: He has moved on to another  
18 position.

19 THE COURT: Now, just a moment. I was told that he  
20 was deposed, and one of my special masters monitored that  
21 deposition. He may have been deposed, and I don't know what  
22 -- in capacity -- as a 30(b)(6). I'm not certain how he was  
23 deposed, but if he's our 30(b)(6) and we have to have another  
24 30(b)(6), I need to know that. What occurred? Did he just  
25 get a different position? Leave the VA?

1 MR. ROSENBERG: No. Your Honor, this doesn't have  
2 anything to do with the 30(b)(6) depositions --

3 THE COURT: Okay.

4 MR. ROSENBERG: -- that have taken place. This is  
5 just -- this is truly a housekeeping matter. Under  
6 Rule 25(d) when you have an official capacity defendant on  
7 behalf of the United States --

8 THE COURT: I understand.

9 MR. ROSENBERG: -- when they move on to another  
10 position --

11 THE COURT: Who's my official capacity acting  
12 director?

13 MR. ROSENBERG: Robert Merchant.

14 THE COURT: Spell it.

15 MR. ROSENBERG: Robert, R-o-b- --

16 THE COURT: R-o-b-e-r-t?

17 MR. ROSENBERG: -- e-r-t. And Merchant, like a  
18 "merchant."

19 THE COURT: That's okay. Spell it for me.

20 MR. ROSENBERG: M-e-r-c-h-a-n-t.

21 THE COURT: M-a-r-c-h?

22 UNIDENTIFIED SPEAKER: Yes.

23 MR. SILBERFELD: I think it's M-e-r, Your Honor

24 MR. ROSENBERG: M-e-r --

25 THE COURT: No, no. Just a moment. M-e-r?

1 MR. ROSENBERG: C-h.

2 THE COURT: C -- like "cat"?

3 MR. ROSENBERG: Yes. Cat.

4 THE COURT: Okay. Like "cat" -- c-h-a-n-t.

5 MR. ROSENBERG: Yes.

6 THE COURT: So he is our -- now our official  
7 capacity as acting director.

8 MR. ROSENBERG: Yes.

9 THE COURT: Okay. Now, just a moment. Did I have  
10 notice of that before? And I'm not concerned if I haven't,  
11 but where was that docketed? Where would I have read that?

12 MR. ROSENBERG: So I don't have the exact docket  
13 number, but I know that in one of our filings as is --

14 THE COURT: Okay.

15 MR. ROSENBERG: -- our usual practice, we updated  
16 the caption and dropped a footnote noting that under  
17 Rule 25(d) Mr. Merchant is automatically substituted as an  
18 official capacity --

19 THE COURT: Okay.

20 MR. ROSENBERG: -- defendant for Dr. Braverman.

21 THE COURT: Now, has he been deposed? Because  
22 Braverman was deposed.

23 MR. ROSENBERG: He has not been deposed.

24 THE COURT: All right. Do my special masters know  
25 about this change as the acting -- because I'm assuming that

1 Merchant is now going to get deposed.

2 MR. ROSENBERG: Oh, I -- you would have to ask  
3 plaintiffs that.

4 THE COURT: Well, go over and talk --

5 MR. ROSENBERG: They have not indicated any  
6 interest.

7 THE COURT: Just step over and ask him.

8 MR. ROSENBERG: Well, they have not indicated an  
9 interest in deposing Mr. Merchant.

10 THE COURT: Well --

11 MR. ROSENBERG: I will note that our captions --

12 THE COURT: Well, just -- are you going to depose  
13 Merchant?

14 MR. SILBERFELD: Subject only to the document  
15 review that is continuing, Your Honor. We don't --

16 THE COURT: Are you going to depose Merchant?

17 MR. SILBERFELD: Well --

18 THE COURT: Are you going to depose Merchant?

19 MR. SILBERFELD: Subject only to discovering  
20 documents which we haven't reviewed yet because they're still  
21 being --

22 THE COURT: I don't know what that means. Are you  
23 going to depose Merchant?

24 MR. SILBERFELD: I don't know.

25 THE COURT: Okay. Then contact my special masters

1 so at least they know. Because that slipped by me, I didn't  
2 see this --

3 MR. SILBERFELD: Sure.

4 THE COURT: -- and they need to be aware of that,  
5 and I don't know if he's East Coast or West Coast -- or  
6 whatever -- but I've got Judge Smith here, I've got judge --  
7 or I've got Daniel Garrie back there, but then my special  
8 masters need to know that, in case he's going to be deposed,  
9 as a courtesy to them.

10 MR. ROSENBERG: And --

11 THE COURT: VA Greater Los Angeles Health Care  
12 System and Keith Harris?

13 MR. ROSENBERG: Yeah. So Keith Harris is still an  
14 official capacity defendant.

15 THE COURT: Okay. As a senior executive homeless  
16 agent?

17 MR. ROSENBERG: Yes.

18 And I'll note, Your Honor, if you look at the  
19 caption, for example --

20 THE COURT: No. Just a moment. Just a moment.

21 VA Greater Los Angeles Health Care System,  
22 "VAGLAHS," and Marcia L. Fudge?

23 MR. ROSENBERG: So Ms. Fudge recently stepped down  
24 as the secretary of --

25 THE COURT: Okay.

1 MR. ROSENBERG: -- Housing and Urban Development.

2 THE COURT: Yeah. And who is now our official  
3 capacity secretary Department of Housing and Urban  
4 Development, "HUD"?

5 MR. ROSENBERG: Adrienne --

6 THE COURT: Spell it for me.

7 MR. ROSENBERG: A-d-r-i-a-n-n-e.

8 THE COURT: New word "me"?

9 MR. ROSENBERG: Yeah. Two Ns.

10 THE COURT: A-d-r-i-n --

11 MR. ROSENBERG: No. A-d-r-i-a --

12 THE COURT: -- i-a --

13 MR. ROSENBERG: -- n-n-e.

14 THE COURT: -- n-n --

15 MR. ROSENBERG: E.

16 THE COURT: Okay.

17 MR. ROSENBERG: As in "excellent."

18 THE COURT: Excellent. Right.

19 MR. ROSENBERG: Todman.

20 THE COURT: Now, beyond that, do I have the parties  
21 correct?

22 MR. ROSENBERG: The parties are correct. I will  
23 note that Zachary Avallone, who you may remember is our  
24 former DOJ colleague who handled the September motion to  
25 dismiss hearing -- he has literally moved on to greener

1 pastures --

2 THE COURT: Okay.

3 MR. ROSENBERG: -- but his name is still appearing,  
4 I think, on the --

5 THE COURT: All right.

6 MR. ROSENBERG: -- notice, and so he withdrew as  
7 counsel, and so his name should no longer appear as a  
8 attorney on behalf of the United States.

9 THE COURT: All right. Now, where would I find  
10 Robert Merchant and Adrienne "N-n-d." In other words, what  
11 document am I looking at that was filed so I'm absolutely  
12 certain that I have the docket number.

13 MR. ROSENBERG: So I would have to look up --

14 THE COURT: Go ahead and look it up. It's fine.

15 MR. ROSENBERG: Okay. I will note, though, that  
16 Mr. Merchant --

17 THE COURT: No. That's fine. Go look it up.

18 MR. ROSENBERG: I will note that Mr. Merchant is  
19 appearing on all of the captions currently.

20 THE COURT: Counsel, go look it up. Unfortunately,  
21 I'm one of those judges who read everything, and I just don't  
22 recall this.

23 (Pause.)

24 THE COURT: And I think it's a distinction without  
25 a difference, in a sense. I just want to know who's being

1   deposed, and I don't want to hear a last-moment issue when I  
2   have my special masters on the phone as of yesterday saying  
3   everything is going fine. I'm assuming that it's going fine,  
4   but there are no surprises now.

5                   (Pause.)

6                   MR. ROSENBERG: Apologies. My computer has frozen  
7   on me. So it might take just a moment.

8                   THE COURT: Well, that's okay. Use theirs. They  
9   can get busy. Get your computers out. And you two can  
10  cooperate now. We're wasting time. And find this docket  
11  number for me.

12                   (Pause.)

13                   THE COURT: By the (indecipherable), it doesn't  
14  make a difference -- you understand that -- as far as my  
15  decision is concerned. I just want to get my record  
16  straight, and I want to know that, if I missed something,  
17  then I need to read more carefully. Because I don't recall  
18  this being docketed and so --

19                   MR. ROSENBERG: I'm going to find it, Your Honor.  
20  The only thing that -- for the substitution of Mr. Merchant  
21  for Dr. Braverman --

22                   THE COURT: I don't need an explanation. I need to  
23  see a docket. Find it for me.

24                   MR. ROSENBERG: I'm working on it.

25                   THE COURT: We're stopping this conversation now.



1 If I missed something, I need to know that, and I need to  
2 correct myself; I need to read more carefully. Where was  
3 this docketed?

4 (Pause.)

5 (Court confers with clerk.)

6 (Pause.)

7 THE COURT: And if it hasn't been docketed, don't  
8 worry. Just get it docketed, and send it off to my special  
9 masters. That's all I'm asking.

10 MR. ROSENBERG: I can note that Ms. Fudge only  
11 recently stepped down as secretary of Housing and Urban  
12 Development so that has --

13 THE COURT: No problem. I'm not finding --

14 MR. ROSENBERG: -- not formally been docketed yet.

15 THE COURT: I'm not finding fault. What I'm  
16 finding is preparation here, and so Fudge needs to be  
17 formally substituted on the docket, end of discussion, and if  
18 Merchant wasn't done before, I'm not criticizing you. Just  
19 do it.

20 MR. ROSENBERG: No. I know that he was and I --

21 THE COURT: And then get it out to my special  
22 master, but tell me -- if it's been docketed, then I wanted  
23 to know where that is, and if I'm missing something, then I'm  
24 going to read more carefully.

25 (Pause.)

1 TOMMY H. DU: Your Honor, Docket 84 in Footnote 1  
2 identifies Robert Merchant.

3 THE COURT: Okay. Thank you so much.

4 (Court confers with clerk.)

5 THE COURT: And does it note that Braverman is no  
6 longer in his official capacity, or does it just add  
7 Merchant?

8 MR. ROSENBERG: It's a substitution, Your Honor.

9 THE COURT: A substitution. Thank you.

10 (Court confers with clerk.)

11 THE COURT: Excellent. First of all, thank you.  
12 Okay. And my special masters may have missed that, also, and  
13 my only concern is at that last moment, you know, Merchant  
14 appears on the scene for some deposition and then it causes a  
15 request for a delay of the trial.

16 All right. Concerning the merits of this, counsel,  
17 the Court is granting the plaintiffs' motion for class  
18 certification, and I'm certifying the class and subclass to  
19 pursue class claims and once again appointing and  
20 reappointing Powers, Sessom, Fields, Johnson, Wright, Pettit,  
21 Castellanos -- strike that. Castellanos has been stricken --  
22 Stibbie, Doe 1, and the National Veterans Foundation as class  
23 representatives.

24 And before I go further, I want you to turn back  
25 now to page 1, and as class representatives we had more than

1 those persons that I had named. So very carefully go through  
2 this, and make certain that in the appointment of Powers,  
3 Sessom, Fields, Johnson, Wright, Petitt, Stibbie, and Doe 1  
4 that there isn't a class representative missing.

5 MR. SILBERFELD: There's not with the exception of  
6 the institutional plaintiff, the National Veterans  
7 Foundation, Your Honor.

8 THE COURT: Okay -- and the National Veterans  
9 Foundation as class representatives for the proposed class.

10 And who do you believe is missing?

11 MR. SILBERFELD: Only that one. That --

12 THE COURT: Well, it's right on line 9 and 10.  
13 National Veterans Foundation as class representatives.

14 MR. SILBERFELD: I might have different pagination  
15 than the Court has.

16 THE COURT: Well, you may have, but would you read,  
17 then, line 9 to me?

18 MR. SILBERFELD: Line 9 of --

19 THE COURT: It should read: Powers, Sessom, Fields,  
20 Johnson, Wright, Petitt --

21 MR. ROSENBERG: Page 15 --

22 MR. SILBERFELD: Ah, I see. I was on the wrong  
23 page. Sorry.

24 THE COURT: Okay. Let's go on: Stibbie, Doe 1,  
25 and National Veterans Foundation.

1 MR. SILBERFELD: Yeah. The only correction is  
2 Castellanos is removed.

3 THE COURT: And I've done that.

4 MR. SILBERFELD: Thank you.

5 THE COURT: All right -- as the proposed class, and  
6 Plaintiff Johnson as the class representative for the  
7 proposed subclass. And I'm going to appoint the  
8 Public Counsel Law Center, the Inner City Law Center,  
9 Brown Goldstein Levy LLP, and Robins Kaplan LLP as class  
10 counsel for both the proposed class and subclass.

11 Now, I'm going to clean up this order because there  
12 have been a number of interlineations, and I'll send that out  
13 to you by tonight or by tomorrow.

14 Now, I'd like to speak to you, as counsel --  
15 informally with everybody's permission -- and one  
16 representative from the other side for just a moment about  
17 just a scheduling issue that came up for a moment. Okay? So  
18 if I could just see you informally. Would that be acceptable  
19 to all -- all it involves is a scheduling, a conflict date  
20 that we might have, so.

21 (Recess from 1:40 p.m. to 1:45 p.m.)

22

23 AFTER RECESS

24 THE COURT: Then counsel, there has been an  
25 informal discussion. For my record, it only concerns some

1 tentative dates. The case will, of course, commence on  
2 August 6th. We'll be dark on -- after two weeks of trial,  
3 though, on August 16th, 19th, and 20th, and resume on the  
4 21st, 22nd, 23rd or -- and/or until we're done in a  
5 continuous session. So there will be two days that the  
6 court's dark because it normally has a calendar on the 19th,  
7 which wouldn't have been a session anyway.

8 In light of that, there's been an informal  
9 discussion about potentially setting a different pretrial  
10 date, and what date would you suggest?

11 MR. ROSENBERG: If it works for the Court,  
12 Your Honor, we would suggest July 29th, but I think, really,  
13 any day that -- the first half of that week, depending on the  
14 Court's calendar and counsels' calendar, would work well.

15 THE COURT: Okay. Just a moment. On the 29th.  
16 I'm not available on the 29th. I would be available the  
17 first Friday -- that period of time would actually be August  
18 -- no. Strike that. Would be on the 13th of July. That's  
19 my -- strike that. That's a Saturday.

20 I'm available to you any time the date of July 9th  
21 through the 12th.

22 MR. ROSENBERG: We currently have July 15th as the  
23 final pretrial conference. So we were looking --

24 THE COURT: I'm available to you the 15th, and I'm  
25 also available to you the 16th, if you want to move it back

1 just one day, but that's my availability.

2 MR. ROSENBERG: I don' think a day would --

3 THE COURT: Okay. Then I've got to leave it the  
4 15th with my apologies.

5 MR. ROSENBERG: Understood.

6 THE COURT: Okay.

7 All right. Then is there anything further,  
8 counsel? And I'll get out a formal docketed opinion as soon  
9 as I make those changes, which are minor.

10 SILBERFELD: Nothing further from the plaintiff.

11 THE COURT: Okay.

12 MR. ROSENBERG: Nothing from us, Your Honor. Thank  
13 you.

14 THE COURT: Been a pleasure seeing all of you. All  
15 of you have a good day now.

16 MR. ROSENBAUM: Your Honor, thank you very much.

17 THE COURT: Thank you.

18 (Proceedings adjourned at 1:48 p.m.)

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## CERTIFICATE

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

/s/ Julie Messa  
Julie Messa, CET\*\*D-403  
Transcriber

May 2, 2024  
Date