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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - CENTRAL DIVISION  
THE HONORABLE DAVID O. CARTER, U.S. DISTRICT JUDGE

JEFFREY POWERS, et al,

Plaintiffs,

Case No. LACV22-8357

vs.

DENIS RICHARD MCDONOUGH,

Defendants.

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REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS  
TRIAL DAY 16  
Friday, August 30, 2024  
8:00 a.m.  
LOS ANGELES, CALIFORNIA

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TERRI A. HOURIGAN, CSR NO. 3838, CCRR  
FEDERAL OFFICIAL COURT REPORTER  
350 WEST FIRST STREET, ROOM 4311  
LOS ANGELES, CALIFORNIA 90012  
(213) 894-2849

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**APPEARANCES OF COUNSEL:**

**FOR THE PLAINTIFF:**

ROBINS KAPLAN LLP  
BY: ROMAN M. SILBERFELD  
TOMMY DU  
Attorneys at Law  
2121 Avenue of the Stars, Suite 2800  
Los Angeles, California 90067

PUBLIC COUNSEL  
BY: MARK D. ROSENBAUM  
AMELIA PIAZZA  
AMANDA MANGASER SAVAGE  
YI LI  
Attorneys at Law  
610 South Ardmore Avenue  
Los Angeles, California 90005

BROWN GOLDSTEIN and LEVY, LLP  
BY: EVE L. HILL  
Attorney at Law  
120 East Baltimore Street, Suite 2500  
Baltimore, Maryland 21202

PUBLIC COUNSEL  
BY: AMANDA MANGASER SAVAGE  
Attorney at Law  
610 South Ardmore Avenue  
Los Angeles, California 90005

**FOR THE DEFENDANT: DENIS RICHARD MCDONOUGH**

US DEPARTMENT OF JUSTICE  
CIVIL DIVISION - FEDERAL  
PROGRAMS BRANCH  
BY: BRAD ROSENBERG  
AGBEKO PETTY  
JODY LOWENSTEIN  
TAYLOR PITZ  
CODY TAYLOR KNAPP  
CARLOTTA P. WELLS  
Attorneys at Law  
1100 L. Street, N.W.  
Washington D.C. 20005

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APPEARANCES: (CONT.)

**FOR THE INTERVENOR:**

ELKINS KALT WEINTRAUB REUBEN GARTSIDE LLP  
BY: ERNEST J. GUADIANA  
JUSTIN TRUJILLO  
Attorneys at Law  
10345 West Olympic Boulevard  
Los Angeles, California 90064

**ALSO PRESENT:**

Batina Washington, HUD  
Kristin Grotecloss, Veterans Administration  
Tobin Dale, Veterans Administration  
Keith Harris, Party Representative  
Robert Davenport, Counsel  
Marcie Vega

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**LOS ANGELES, CALIFORNIA; FRIDAY, AUGUST 30, 2024**

**8:00 A.M.**

**--OOO--**

THE COURT: Good morning. Please be seated, and we're on the record. All counsel are present. The parties are present. And good morning to all of you, and, Counsel, would you like to call your next witness, please.

MR. GUADIANA: Yes, Your Honor.

THE COURT: This would be on behalf of Bridgeland. Once again, let me make certain with Bridgeland, although, there hasn't been cross-examination on many or most occasions, the record should reflect that you have been here at all times, Counsel.

MR. GUADIANA: Yes. Correct, Your Honor.

THE COURT: Is there any witness, thus far, that you would like to recall? And, if so, make that known to the Court and the parties. We will have that witness for you.

But your presentation, please.

MR. GUADIANA: There is no one who we would like to recall.

THE COURT: Okay.

MR. GUADIANA: Your Honor, Bridgeland calls Rob Rainbolt.

THE COURT: Thank you very much. Sir, if you would

1 step forward.

2 Good morning, sir. Would you be kind enough to raise  
3 your right hand.

4 THE COURTROOM DEPUTY: Do you solemnly swear that  
5 the testimony you give in the cause now pending before this  
6 Court, shall be the truth, the whole truth, and nothing but the  
7 truth, so help you God?

8 THE WITNESS: I do.

9 THE COURT: Thank you, sir. Would you please be  
10 seated here in the witness box. And the steps are closest to  
11 the wall.

12 What I'm most worried about is this little step, I will  
13 point out to you. Come on up for just a minute. There is  
14 about an inch-and-a-half step.

15 THE WITNESS: Thank you.

16 THE COURT: Good morning. If you would state your  
17 full name for the record, please?

18 THE WITNESS: Robert Roy Rainbolt.

19 THE COURT: And would you spell your last name, sir.

20 THE WITNESS: R-A-I-N-B-O-L-T.

21 ROBERT ROY RAINBOLT,  
22 having been duly sworn,  
23 testified as follows:

24 THE COURT: And this would be direct examination on  
25 behalf of Bridgeland.

1 MR. GUADIANA: Thank you, Your Honor. Ernest  
2 Guadiana on behalf of intervenor Bridgeland Resources, for the  
3 record.

4 DIRECT EXAMINATION

5 BY MR. GUADIANA:

6 Q Good morning, Mr. Rainbolt.

7 A Good morning.

8 Q Now, I understand that you have an extensive career in the  
9 oil and gas industry?

10 A Yes.

11 Q Can you, please, go through your background, beginning  
12 with college and going through to today?

13 A Undergraduate, University of Oklahoma. Graduated law  
14 school, University of Tulsa. Member of the Oklahoma Bar.

15 Started in the oil and gas business in 1975 and in --  
16 with companies and worked in the land department.

17 Started out i the land department of oil companies, and  
18 for those that don't know, the land department, I always kind  
19 of summarize, takes care of the business part of the oil and  
20 gas business.

21 It's not scientific, like the geologists, geophysicists,  
22 and engineers, it deals with other oil companies. It deals  
23 with landowners. It deals with -- it has the responsibilities  
24 of securing the leases that give the oil and gas companies the  
25 right to go out and drill and produce, so, it was that.



1           And then, also, I was in legal department with various  
2 oil companies throughout the time.

3           Again, deal with industry partners, doing joint venture  
4 agreements, mergers, acquisitions, title work, leasing,  
5 drilling wells, producing, and those type of necessary  
6 activities in the business.

7 Q       And your career entailed working both for Tenneco,  
8 Bellnorth, Enron, TGX, Midcon Offshore, Yuma Exploration, and  
9 now you run your own land services company, Energy Management  
10 Services?

11 A       Correct. In 2008, it was kind of like I got tired of  
12 being an employee. And so I decided to go out and start my own  
13 consulting company, which is Energy Management Services.

14 Q       And now, through your entire career, you dealt hands-on  
15 with oil and gas lease negotiations and licensing, correct?

16 A       Correct. Yes.

17           MR. GUADIANA: Your Honor, Bridgeland moves for the  
18 Court to recognize the Mr. Rainbolt as an expert in oil and gas  
19 leasing.

20           THE COURT: You may proceed.

21           MR. GUADIANA: Thank you, Your Honor.

22 BY MR. GUADIANA:

23 Q       So I would like to walk you through some of the leases  
24 that Bridgeland resources has that allows it to operate on the  
25 West LA Campus.

1 So, I'd like to start with Exhibit 310.

2 MR. GUADIANA: Your Honor, I would like to approach  
3 the bench to provide that exhibit to the witness.

4 THE COURT: Thank you. Don't worry about the well.  
5 If it's quicker for you, we will forget that formality.

6 Thank you very much.

7 BY MR. GUADIANA:

8 Q Now, Mr. Rainbolt, I would like to start on page 1. Have  
9 you seen this lease before?

10 A Yes.

11 Q Can you tell me what this lease is exactly?

12 A It's a lease with the Bureau of Land Management to cover  
13 the federal minerals and federal surface and was entered into  
14 by a gentleman by the name of Dowlen, standard form Bureau of  
15 Land Management lease.

16 Q Thank you.

17 And I'd like to turn to page 4 of the exhibit, which is  
18 the page entitled Lease Terms. It starts with Section 1.

19 So, it's a little hard to read, but I have blown it up  
20 on the screen for you.

21 These documents from 1950s are not the most legible.  
22 But, you know, what I would like to discuss the most is the  
23 type of rights that Section 1 gives to the lessee.

24 Specifically, it states that this lease is granted the  
25 exclusive right and -- the lessee is granted the exclusive

1 right and privilege to drill for, mine, extract, remove, and  
2 dispose of all of the oil and gas deposits, except helium gas,  
3 in the land leased together with the right to construct and  
4 maintain thereupon all works, buildings, plants, waterways,  
5 roads, telegraph and telephone lines, pipelines, reservoirs,  
6 tanks, pumping stations, and other structures necessary to the  
7 full enjoyment thereof.

8           You see that language, correct?

9 A       Yes.

10 Q       Can you tell me what rights that language gives to the  
11 lessee?

12 A       If I may, too, kind of elaborate on that, the federal  
13 government, Bureau of Land Management lease language is the  
14 same industry standard, if you will, as if you were dealing  
15 with private lands. So that language is in there. And it --  
16 to me, that evolves from what is well settled is that the  
17 mineral estate is the dominant estate over the surface estate.  
18 And the mineral owner rights -- have the right to go in and use  
19 the reasonable amount of the surface to extract and produce the  
20 minerals.

21           So what this does -- and privately and the BLM, it  
22 basically just expresses in the lease the rights that are well  
23 established for the mineral estate to give the lessee the right  
24 to go on the surface, drill wells, produce wells. And that  
25 lease will be in effect for as long as oil and gas are

1 producing.

2 Q And it's your understanding that it's this language in  
3 this lease that gives Bridgeland its right to occupy the drill  
4 site on the West LA grounds?

5 A Yes, exactly. To use a reasonable amount of the surface  
6 for the drilling and all facilities that are necessary for  
7 producing the oil and gas.

8 Q Excellent.

9 So I would like to move to the second lease that  
10 Bridgeland has to operate. This is Exhibit 311, which my  
11 colleague will bring up to you.

12 THE COURT: Thank you very much. I appreciate that.  
13 Counsel, is this -- I have referred to this on occasion  
14 as the 1956 lease.

15 MR. GUADIANA: The one that we just discussed is --

16 THE COURT: No, no.

17 MR. GUADIANA: -- the 1956 lease. The one that  
18 we're about to talk about is the 1969.

19 THE COURT: '67. Right.

20 So I've got -- in my mind, I refer to this on occasion,  
21 if I have any questions, as the 1956 lease. I will refer to  
22 311 on occasion as the 1967 lease.

23 MR. GUADIANA: '69 lease.

24 THE COURT: '69 lease. I apologize.

25 BY MR. GUADIANA:

1 Q Mr. Guadiana, can you tell me what this lease does and  
2 who -- and what exactly this lease is?

3 A This is an additional lease that was taken by Occidental  
4 from the Bureau of Land Management and it leased additional  
5 lands north of Constitution Avenue.

6 And -- so it just gave Occi the right to go on the  
7 surface there. Same as the 1956 lease. Gave them the right to  
8 go on the surface and drill and produce wells from this  
9 additional acreage.

10 Q So I want to just walk through a couple of the provisions  
11 in this lease, which are a little bit better legible -- more  
12 legible than the last one.

13 In the -- I believe this is Section 1, the rights of the  
14 lessee. I believe section A, it says, Provided that this lease  
15 shall not be deemed to expire by reason of suspension of  
16 operations, production, pursuant to any order --

17 THE COURT: Just a little slower. And start over  
18 again so I know you have an accurate record and I do as well.

19 BY MR. GUADIANA:

20 Q So I'm actually going to start with the second line of  
21 this, which says that Except as otherwise provided and subject  
22 to the conditions herein specified, the lessee shall have the  
23 right to construct and maintain upon the leased lands all  
24 works, buildings, plants, waterways, roads, telegraph or  
25 telephone lines, pipelines, reservoirs, tanks, pumping stations

1 and other structures as may be necessary to the full enjoyment  
2 of the lease.

3 Mr. Rainbolt, I assume that this language does the exact  
4 same as the 1956 language, which allows these types of items to  
5 be constructed on a certain portion of the lands under lease  
6 to -- under this 1969 BLM lease?

7 A Correct.

8 Q So I want to go through a couple of other provisions in  
9 this lease that further restrict the types of rights allowed  
10 for the surface.

11 So on page 4 of this exhibit, the last paragraph, which  
12 is deemed Section 1A provides that Pursuant to lessor's  
13 reservation of easements and rights-of-way under Section 3A of  
14 oil and gas lease Los Angeles 0138800, which is the reference  
15 to the 1956 BLM lease, the lessee is hereby granted subsurface  
16 easements and rights-of-way through such leasehold as may be  
17 necessary for the orderly development of parcel A hereof  
18 subject to any conditions deemed necessary by and subject to  
19 the approval of the regional oil and gas supervisor of the  
20 geologic survey having supervision over the operations  
21 hereunder.

22 Can you explain the effect of this language and what  
23 that language allows?

24 A What this is doing is giving the lessee drill-through  
25 rights through the mineral estate to set up on one surface

1 parcel, drill through the subsurface and bottom in a separate  
2 parcel.

3 Q And, specifically, this is allowing drilling from the  
4 drill site under the 1956 lease into the minerals under the  
5 1969 lease, correct?

6 A Correct. Yes. The way I envision it is that the 1956  
7 surface location and wells drilled, let's say, were south of  
8 Constitution Avenue. And the 1969 lease is north of  
9 Constitution Avenue.

10 So this allows -- so this provision allows the lessee to  
11 set up on the surface of the 1956 lease and directionally  
12 drill, slant drill, and bottom wells into the lease that is  
13 north of Constitution Avenue, which is the 1969 lease.

14 Q All right.

15 A And it expressly gives that right.

16 Q Sir, I want to go through a few other restrictions that  
17 this lease has on the surface.

18 So Attachment A, which is page 5 -- it's the next page  
19 of this exhibit -- contains additional restrictions.

20 And one of those talks about drilling wells. And the  
21 third sentence states: That Such operations may be conducted  
22 on the leased lands at a surface location on the area described  
23 in attachment C-1.

24 And so I would like to -- let's just reference C-1  
25 because this comes up again in the next page that I'm going to

1 show you, which is page 7 of Exhibit 311, which provides under  
2 attachment C, No. 1, The portion of the surface of the lands  
3 available for drilling and production facilities shall be  
4 limited to the area designated in Attachment C-1 and shown on  
5 Exhibit A.

6 Now, correct me if I'm wrong, but reading all of this  
7 together basically says that on this 1969 BLM lease, we are --  
8 at least when this lease was entered into, other than being  
9 able to drill slant wells from the drill site under the 1956  
10 BLM lease, that surface facilities had to be limited to what  
11 was shown on Attachment C-1?

12 A Correct.

13 Q So, here is Exhibit A, which is also attachment C-1, which  
14 shows the designated drill site just north of Constitution  
15 Avenue?

16 A Correct.

17 Q Now, is it your understanding whether any drills were ever  
18 drilled on that drill site?

19 A My understanding is no wells were ever drilled on that  
20 surface.

21 Q But, rather, all of the drills that were drilled into the  
22 1969 BLM lease were drilled from the drill site south of  
23 Constitution Avenue?

24 A Drill site under the 1956 lease, correct.

25 THE COURT: Now, just one moment. Let me up with



1 you. Give me one moment, Counsel.

2 Thank you. Counsel.

3 BY MR. GUADIANA:

4 Q So, I'm going to show you exhibit -- what we're labeling  
5 Exhibit 202.

6 And this is a -- I will let you explain what this  
7 document is.

8 A This is an agreement that was entered into in 2016 between  
9 the parties and the Veterans Administration to where that  
10 they -- to where that the lessee relinquished its rights to,  
11 let's say, use the surface of the 1969 lease, which was north  
12 of Constitution Avenue.

13 Q And so in Section 1, it discusses that relinquishment  
14 where it notes the 1969 BLM lease and relinquishes its rights  
15 in that original drill site. And it provides that in return,  
16 the VA hereby simultaneously substitutes and provides lessee  
17 access to the replacement drill site per Paragraph 4 and as  
18 described and depicted in Attachment B below, in lieu of the  
19 original drill site, except as otherwise stated and permitted  
20 in this agreement.

21 So, basically, this is just swapping drill sites,  
22 correct?

23 A Yes. Well -- right. And as to the surface. Just so  
24 everybody is clear is that the mineral rights underneath the  
25 1969 lease were not surrendered. It was only that surface

1 access right for that lease. Correct.

2 THE COURT: Do you have the same area in the  
3 subsurface in the 1956 and 1969 leases? In other words, I'm  
4 not talking about the surface area now. I'm talking about the  
5 area -- and sometimes I confuse my words, so I'm not an expert  
6 in oil, but in the subsurface rights, does the 1969 lease  
7 expand upon the area in the subsurface lease in 1956?

8 THE WITNESS: I need to double-check it, but I'm  
9 pretty sure that, yes, is that the 1969 lease leased additional  
10 lands, leased additional minerals over and above what was under  
11 the 1956 lease.

12 THE COURT: Before you leave today, could you check  
13 that for me? Could you check that for me?

14 THE WITNESS: Yes.

15 THE COURT: Okay. Thank you. Counsel.

16 BY MR. GUADIANA:

17 Q So, going to page 8 of Exhibit 202, this shows the  
18 original drill site, which was leased under the 1969 lease and  
19 which was being relinquished. And then going onto the next  
20 pages, it shows, I believe, outlined in red, the additional  
21 drill site or the replacement drill site that was being swapped  
22 for the original drill site, correct?

23 A Correct.

24 THE COURT: That is confusing when we flip back and  
25 forth with both maps. I want you to correct me.

1           The present drill site is shown just south of  
2 Constitution Avenue; is that correct?

3           THE WITNESS: Yes.

4           THE COURT: And the swapped-out portion is for a  
5 leased portion north of Constitution Avenue. You have a leased  
6 portion north of Constitution Avenue?

7           THE WITNESS: Yes, per the 1969.

8           THE COURT: Right. And what is being swapped out is  
9 this red designated area just to the south of the present drill  
10 site to the south of Constitution.

11           THE WITNESS: I might phrase it that the red was the  
12 replacement.

13           THE COURT: Fine, replacement, swapped out,  
14 whatever. I will use replacement.

15           Now, after we're done with that quibbling, that is the  
16 replacement then; is that correct?

17           THE WITNESS: Yes.

18           THE COURT: Okay. Thank you. Counsel.

19 BY MR. GUADIANA:

20 Q       And so, in effect, although none of the mineral rights  
21 were changed and that the lessee's rights to drill and produce  
22 the minerals remain the same, what this document does is no  
23 longer allow the lessee under the 1969 lease any rights over  
24 the surface north of Constitution Avenue, but, rather, expands  
25 their rights south of Constitution Avenue and just south of the

1 current drill site?

2 A That's correct.

3 Q So we have just gone through the leases. I would like to  
4 start discussing the royalty provisions that burdens these  
5 leases.

6 Now, obviously, Mr. Rainbolt, unless I'm incorrect, I  
7 assume that both the 1956 lease and the 1969 lease each have  
8 royalty language where the lessee is required to pay to the  
9 United States Government through the BLM a certain royalty  
10 rate, correct?

11 A That is correct.

12 Q So I'm going to now show you Exhibit 316. And if you can  
13 turn to page 4.

14 Now, can you explain what this assignment of royalty  
15 interest does?

16 THE COURT: Are these reports numbered? I want to  
17 make sure they are the same. Okay.

18 MR. GUADIANA: It should also be on your screen,  
19 Your Honor.

20 THE WITNESS: Yes. Dowlen was the lessee under the  
21 1956 lease. And as we said, a royalty is paid to the Bureau of  
22 Land Management. And what Dowlen did is he went in and made a  
23 gift to the -- let's say to the VA of a two and a half percent  
24 override of -- on all of the production from the 1956 lease  
25 that was -- that would have been produced from the 1956 lease.

1 BY MR. GUADIANA:

2 Q And so just to better understand what an overriding  
3 royalty is, basically, out of his portion of the lessee's  
4 interest, he granted two and a half percent overriding royalty  
5 over that to the VA under this document for all of the wells  
6 drilled pursuant to the 1956 lease?

7 A That is correct. Right. Industry standards, you have  
8 your base royalty that goes to the landowner. And then any  
9 royalties that are carved out of the revenue over and above  
10 that are generally referred to as an overriding royalty, over  
11 and above the original royalty.

12 Q Thank you.

13 So, then, for the indefinite future, so long as the 1956  
14 lease is producing, any wells that are drilled under that 1956  
15 lease give a two and a half percent overriding royalty -- so  
16 two and a half percent on the gross amount of barrels produced  
17 go to the VA from those wells, correct?

18 A Yes. Subject to -- normally, what -- an operator is  
19 allowed to make certain deductions from the royalty payment.  
20 And those deductions would also apply to an overriding royalty.

21 An example -- and where that comes from is that under a  
22 normal lease, let's say, privately, a landowner has the right  
23 to take his oil in kind. And he could market his own oil or  
24 his royalty share of the oil.

25 And if oil needs to be treated, like the -- water is

1 entrained in it and water needs to be separated and you have to  
2 add chemicals to the oil to separate the water to make it  
3 marketable, if a landowner was marketing his own oil, he would  
4 have to spend those same dollars to make his oil marketable.

5           So, a lessee is allowed to deduct those type of expenses  
6 to make the oil marketable and then -- so it's not truly on a  
7 gross basis. It's going to be on net but very limited  
8 deductions having to do with being able to sell the oil.

9 Q       Right. But that doesn't include any types of drilling  
10 costs or employee costs or work-over costs or anything that the  
11 operator would generally do; this is solely just dehydrating  
12 oil and treating it?

13 A       Right. A royalty owner is not responsible for any capital  
14 cost, any risk cost. All of this is risk free.

15 Q       Great.

16 A       Yes.

17 Q       So, I'm going to show you Exhibit 313.

18           THE COURT: Thank you.

19 BY MR. GUADIANA:

20 Q       So, Mr. Rainbolt, can you please explain to me what  
21 exactly this lease agreement is and does?

22 A       I'm trying to remember which one this is.

23 Q       I believe this is the 1966 lease that allowed the lessee  
24 of the 1956 BLM lease certain rights to drill into private  
25 minerals.

1 A Yes.

2 Q And if you note at the top, interestingly, the BLM is not  
3 a party to this.

4 A Right.

5 Q Rather, this is solely between the VA and Occidental  
6 Petroleum, correct?

7 A Correct. I think it is an interesting question. And we  
8 don't know. For this lease agreement, I would have thought  
9 Occi could have gone to the Bureau of Land Management and got  
10 the same agreement.

11 But the VA is the surface owner. And so they went to  
12 the VA, as surface owner, and got the right to set up on the  
13 drill site south of Constitution Avenue and be able to use that  
14 to drill through the subsurface off of the VA federal lands,  
15 Bureau of Land Management lands, and bought them the well on  
16 private lands and then be able to use that surface to produce  
17 that well. And --

18 THE COURT: Is this where Sawtelle 2 was able to  
19 slant drill?

20 THE WITNESS: Yes, sir. Yes.

21 THE COURT: One more question. I'm sorry for  
22 interrupting.

23 So Sawtelle 2, that is our slant drill. It's about four  
24 over on the site. That allows you to slant drill Sawtelle 2,  
25 correct?

1 THE WITNESS: Yes.

2 THE COURT: And this is what Sawtelle 2 is based  
3 upon?

4 THE WITNESS: Correct.

5 THE COURT: Okay. Now, help me, because the past  
6 leases were with BLM. Here, this is an anomaly. They are  
7 dealing directly -- although it's the owner -- with the VA.  
8 How do they deal with BLM on these leases and also the VA? Why  
9 isn't there consistency?

10 THE WITNESS: It's almost kind of like the original  
11 question that I started out with. I'm not sure why Occi just  
12 didn't go to the BLM --

13 THE COURT: The BLM. Right.

14 THE WITNESS: Because the BLM has that right to use  
15 the surface, bore the minerals, and their administration of  
16 that and receive this same lease from the Bureau of Land  
17 Management.

18 THE COURT: Okay. Thank you.

19 THE WITNESS: I don't have the answer.

20 THE COURT: I'm sorry for interrupting, Counsel.

21 MR. GUADIANA: Of course.

22 BY MR. GUADIANA:

23 Q So just to go through exactly what this lease agreement  
24 states. It notes that the corporation Occidental desires to  
25 use the said drill sites under the 1956 lease as a surface



1 location from which to drill wells through the leased lands  
2 under the jurisdiction of the government and to bottom said  
3 wells under the lands in which the corporation has a right to  
4 do so which are outside of the boundaries of said Veterans  
5 Administration Center reservation.

6 The agreement goes on to say, Now, therefore, the  
7 government does hereby lease to the Occidental Petroleum  
8 Corporation, or its assigns, the existing drill site at the  
9 Veterans Administration Center for the purposes aforesaid for a  
10 term of three years commencing with the date of acceptance by  
11 the corporation subject to renewal by agreement of the parties  
12 for additional -- for such additional periods of time as may be  
13 legal and permissible under the circumstances existing at the  
14 time of expiration of the lease term herein provided.

15 Now, as consideration under this lease -- I believe it's  
16 Section 1 discusses that -- can you explain the exact type of  
17 consideration Occidental was giving to the VA for entering into  
18 this lease?

19 A Right. As consideration, Occidental said that they would  
20 pay the Veterans Administration a royalty of two and one half  
21 percent of the proceeds of production.

22 THE COURT: In the 1966 lease? In other words, is  
23 this a continuation of the 1956 lease, and just regurgitating  
24 again or renewing the two and a half percent in the 1966 lease?

25 THE WITNESS: No, I'm going to say this is separate

1 because the Sawtelle well was drilled to private lands.

2 THE COURT: That's our slant drill?

3 THE WITNESS: Slant drill, Occi would have had  
4 leases from those private mineral owners, of which they  
5 received their one-eighth royalty interest, or whatever their  
6 royalty is, so this two and a half percent really would be  
7 technically let's say an override over and above what the  
8 private minerals owners are receiving royalty on the  
9 Sawtelle 2.

10 THE COURT: And before we continue on, in the 1956  
11 lease, I think, I'm doing this by memory, was it Mr. Dowlen?

12 THE WITNESS: Yes.

13 THE COURT: Mr. Dowlen. In '56 didn't he pay --  
14 could you go back to Exhibit 310 for a moment. It says,  
15 "Rental retained," could you put up that exhibit for me.

16 Go back to 310 while it's on my mind. Go to page 1.  
17 This would be the 1956 lease, it should be Exhibit 310.

18 Now could you blow up the bottom portion where it  
19 states, "Rental retained."

20 There we are. You are on the right page -- no, just  
21 blow that up for a moment. I had a hard time reading it last  
22 weekend also, so we'll both save our eyesight in just a moment,  
23 okay.

24 Go up. You are going to get to a section you will find  
25 it, called Rental Retain \$335.

1 MR. GUADIANA: I believe that is the delay rental.

2 THE COURT: Counsel, I'm going to eventually get  
3 that up on the board, so you will see it. \$335.

4 THE WITNESS: Right.

5 THE COURT: There we go. You can find to a certain  
6 acreage on the surface the total area on the '56 lease is  
7 670 acres subsurface. What I'm going to ask you to do before  
8 you leave today is see and help the Court understand if there  
9 is an expansion of the original 700 -- or 670 acres subsurface  
10 that the '56 lease confined us to, and there is an expansion in  
11 the 1966 lease or the 1969 lease.

12 Can you do that for me?

13 THE WITNESS: Yes.

14 THE COURT: Before you said you didn't know, just  
15 check your records to help me.

16 Second, when it says, "Rental retained of \$335," I don't  
17 know if that is -- I'm naive, help me a day, a month, a year,  
18 or what? What does that represent?

19 THE WITNESS: Annually.

20 THE COURT: Annually, so \$335.

21 THE WITNESS: Right. I was just going to say that  
22 ties into the primary --

23 THE COURT: I will get there. You will have all  
24 day, trust me.

25 Now I want to go to the 1969 lease for just a moment.

1 And when this was negotiated with the VA and not BLM, which  
2 neither one of us understands, but it is what it is.

3 I want you to go to the same first page and from memory  
4 I think this weekend I saw \$10,000. But you are going to help  
5 me.

6 So, counsel, there we go. No, you've got it. Counsel,  
7 keep going down one line, now below that up for a moment.  
8 Subsection A.

9 Can you blow that up a little bit. I think I went  
10 almost blind reading these documents.

11 We can blow it up.

12 MR. GUADIANA: It's the first page.

13 THE COURT: I had to actually get out a microscope,  
14 so don't feel bad. Let's get this blown up for us. There we  
15 go.

16 I want to be certain that I'm not making an assumption,  
17 but is the sum pursuant to the 1969 lease \$10,000 for the right  
18 now to slant drill, which is going to be Sawtelle 2, is that  
19 annual, daily, monthly?

20 THE WITNESS: This is making reference to a bond  
21 that has to be posted --

22 THE COURT: I see.

23 THE WITNESS: -- to ensure that we will say oil and  
24 gas operations are done in compliance with regulations,  
25 probably more so that a well, whenever it is completed, is

1 plugged and abandoned according.

2 THE COURT: I want to thank you, I would have made a  
3 mistake. I would have assumed this is \$10,000 I didn't know  
4 how to read that.

5 So, in the 1969 lease, was there a renegotiation above  
6 the original \$335 that Dowlen entered into in 1956 with BLM,  
7 did that annual rate of \$335 increase at all for the ability to  
8 now slant drill.

9 Now take your time with that, okay?

10 THE WITNESS: Yes. Let's go back.

11 THE COURT: No, no, no, I don't need you to -- just  
12 think. Really easy question. I want to repeat it again.  
13 Don't need a lot of words, if you don't know tell me you don't  
14 know and look at your documents later on.

15 THE WITNESS: Okay.

16 THE COURT: In the 1969 agreement with the VA, and  
17 the right now to eventually Sawtelle allows us to slant drill,  
18 are we still paying \$335 annually or for this ability to slant  
19 drill now are we paying \$10,000 a year? Did this increase at  
20 all or are we still at \$335 for this increased '69 lease?

21 THE WITNESS: Let me start and say the \$335 is not  
22 being paid any more.

23 THE COURT: Well, okay. I know it's two and a half  
24 percent.

25 And we will talk about that if we get to \$130 or the

1 5 percent at 130. I don't want to go there right now.

2 I just want to know basically in the renegotiation with  
3 the VA if there is any increase from the two and a half percent  
4 from the '56 lease or if there is any increase in the original  
5 \$335 per year?

6 If there is not, the next question is obvious, what did  
7 the VA get out of this.

8 THE WITNESS: The VA gets the two and a half percent  
9 overriding royalty.

10 THE COURT: So you are going to answer my question  
11 now. Was there any increase from the original two and a half  
12 percent of the 1956 lease when the lease was renegotiated in  
13 1969, because I still read two and a half percent.

14 Now take your time with that.

15 MR. GUADIANA: Your Honor, can I ask --

16 THE COURT: No, counsel. I really want to know this  
17 now. You will have all day.

18 THE WITNESS: And I'm trying to follow the question.

19 THE COURT: I will repeat it ad nauseam, because  
20 sometimes I stumble, it's my fault. Let me apologize. In 1956  
21 we have two and a half percent, don't we?

22 THE WITNESS: Which was separate from the lease.

23 THE COURT: Which was separate from the \$335 per  
24 year.

25 THE WITNESS: Yeah, let's characterize --

1 THE COURT: No, let's not, let's just get down to  
2 basics now. In '56 we are paying \$335 per year, correct,  
3 that's one aspect of this?

4 THE WITNESS: Only during the primary term of the  
5 lease.

6 THE COURT: I understand that.

7 THE WITNESS: Okay. Right.

8 THE COURT: And then Dowlen graciously, and I  
9 compliment him, donates two and a half percent.

10 THE WITNESS: To the VA.

11 THE COURT: To the VA. Now I'm going to turn to  
12 1969 and I'm trying to figure out what benefit the VA got out  
13 of the 1969 lease.

14 And I'm still reading in the documents that we're still  
15 at two and a half percent, but the percentage of royalty didn't  
16 increase, did it?

17 THE WITNESS: No.

18 THE COURT: No. Absolutely. And, in fact, I  
19 thought we were still paying \$335, but we're not even paying  
20 \$335 in 1969 are we?

21 THE WITNESS: No.

22 THE COURT: What benefit then did the VA get in the  
23 renegotiation on this lease to give the original right to what  
24 I'm going to call slant drilling?

25 THE WITNESS: Well, under the Occi --

1 THE COURT: What benefit --

2 THE WITNESS: There is none to the VA.

3 THE COURT: None. We could take all day to get  
4 there, but I can't find any either, can you?

5 THE WITNESS: Right.

6 THE COURT: How is this for the benefit of the  
7 veterans?

8 THE WITNESS: The benefit to the veterans is the  
9 lease agreement.

10 THE COURT: The original two and a half percent and  
11 the \$335 that we don't have any more, how did this 1969 lease  
12 principally benefit the veterans?

13 What additional did they get, in fact, it seems they  
14 took a step backwards of \$335 that they originally got in 1956.

15 THE WITNESS: The veterans didn't get the \$335 in  
16 1956 --

17 THE COURT: Oh, we'll quibble about that. BLM got  
18 it, fine. We can spend all day with this now, okay? You are  
19 going to answer my questions eventually and I will turn BLM  
20 around on occasion.

21 My question is really simple: What additional benefit  
22 did the veterans get in 1969?

23 THE WITNESS: I'm trying to remember now --

24 THE COURT: What additional benefit -- I'm going to  
25 be like an owl now, who? What additional benefits did the



1 veterans get in the 1969 lease?

2 THE WITNESS: Are we talking about the Occi lease or  
3 the slant drill lease?

4 THE COURT: You can talk about anything you want to.

5 THE WITNESS: Well, yeah.

6 THE COURT: I will take a total. I will take all of  
7 your leases, I'll take '66 and '69. I'm looking for how  
8 veterans principally benefited.

9 THE WITNESS: Right. On the right to slant drill,  
10 that lease, the Veterans Administration received a separate two  
11 and a half percent royalty over and above what Dowlen had given  
12 the VA.

13 THE COURT: So the benefit that they got was the BLM  
14 still got two and a half percent off the '56 lease?

15 THE WITNESS: BLM/VA.

16 THE COURT: No.

17 THE WITNESS: Under the '56 lease.

18 THE COURT: You know, it's me and I want to  
19 apologize. I apologize to you.

20 We have two and a half percent in 1956 to BLM.

21 THE WITNESS: To the VA.

22 THE COURT: No, in '56 it's the BLM.

23 THE WITNESS: The BLM --

24 THE COURT: I'm sorry. We have \$335 to BLM, my  
25 apologies, yes or no?

1 THE WITNESS: Which is a rental.

2 THE COURT: Do you have \$335 to BLM in 1956 on an  
3 annual basis?

4 THE WITNESS: For a limited time, yes.

5 THE COURT: I understand that. Do you have \$335 in  
6 1956 to BLM?

7 THE WITNESS: Yes.

8 THE COURT: Now you also have two and a half percent  
9 to the VA from Dowlen. Is he giving this to the VA?

10 THE WITNESS: As a gift, yes.

11 THE COURT: Okay. Now, as a gift we're going to go  
12 all the way to '69.

13 And trying to read these documents, I see two and a half  
14 percent to the VA. Look at your '69 lease.

15 THE WITNESS: Right.

16 THE COURT: Okay. That two and a half percent isn't  
17 an additional two and a half percent, it's the same two and a  
18 half percent, isn't it?

19 THE WITNESS: It covers different wells, but yes.

20 THE COURT: That's not my question. I'm going to  
21 ask you again, I'm going to be like an owl now.

22 That two and a half percent is the same percentage that  
23 the VA was getting, or BLM, I don't care, back in 1956, wasn't  
24 it? This didn't go on two and a half percent and two and a  
25 half percent to 5 percent, that two and a half percent is the

1 same exact number that one of these entities is getting,  
2 correct?

3 THE WITNESS: The two and a half percent is the  
4 same.

5 THE COURT: Good.

6 THE WITNESS: But it covers different --

7 THE COURT: Oh, I know that. I'm not stupid, I've  
8 got it. Do you want to repeat that five times.

9 THE WITNESS: I'm just trying --

10 THE COURT: No, no, I'm going to do this again. I'm  
11 going to do it until you and I have an agreement or a  
12 disagreement.

13 That two and a half percent is not an increase, I know  
14 it's for a limited period, it is two and a half percent and  
15 it's the same two and a half percent, whether I call it BLM or  
16 VA that we had in our '56 lease.

17 THE WITNESS: Correct.

18 THE COURT: Excellent.

19 What principal benefit did the veterans get out of the  
20 1969 lease, that's what I have eventually got to decide?

21 THE WITNESS: They got the two and a half -- they  
22 got a --

23 THE COURT: The same two and a half percent. The  
24 same two and a half percent, yes or no? The same percentage,  
25 I'm sorry, I don't care who it's paid for, it could be paying

1 to God.

2 Now, the same two and a half percent.

3 THE WITNESS: But the problem I'm having with saying  
4 the same -- yes, it is the same percentage, two and a half  
5 percent, but it's on different production.

6 THE COURT: Right, different production, but it's an  
7 expanded production.

8 THE WITNESS: Yes.

9 THE COURT: So our client got expanded production,  
10 doesn't have to pay the \$335, and is operating on the same two  
11 and a half percent regardless to who it goes to?

12 THE WITNESS: Yes.

13 THE COURT: What principal benefit did the veterans  
14 receive from this lease in '69?

15 THE WITNESS: An additional two and a half percent  
16 that they would have not received previously because the  
17 Sawtelle 2 well would never have been drilled.

18 THE COURT: Thank you.

19 Counsel?

20 BY MR. GUADIANA:

21 Q Just to clarify some of the questions that the Judge just  
22 asked you.

23 So when we're talking about the 1969 BLM lease and the  
24 1956 BLM lease, those two leases each have separate royalties  
25 that go to the Bureau of Land Management that are set by

1 statute, correct?

2 A That is correct.

3 Q And then in addition to the 1969 lease, and the 1956  
4 lease, which are solely between the BLM and an oil operator,  
5 either Dowlen or Occidental, there is also an additional  
6 royalty that was made with two and a half percent made by gift  
7 by Tom Dowlen to the VA under all wells drilled under the 1956  
8 BLM lease, plus the two and a half percent royalty that was  
9 given for all slant drilled wells from the 1956 drill site, and  
10 outside to private minerals that are not federal minerals,  
11 correct?

12 A Correct.

13 Q So we really have two classes of royalties. We have the  
14 royalty paid to the BLM and the royalty paid to the VA. So  
15 these are completely separate royalties, correct?

16 A That is correct, right. The base royalty under the lease  
17 statutorily set goes to the BLM.

18 Q Do you know about how much the general range of the  
19 statutorily set BLM royalty is that the BLM receives from every  
20 well it's producing?

21 A I don't know what it is currently, but under the '56 lease  
22 it should be an eighth or 12 and a half percent. But that has  
23 increased over the years.

24 THE COURT: So 12 and a half percent. Fine, thank  
25 you.

1 BY MR. GUADIANA:

2 Q And can you just explain the difference between the  
3 primary term and the secondary term because I know the Judge  
4 that some questions about the \$335 rental rate.

5 Can you expand on the difference between that and when  
6 the \$335 was paid versus when the royalty is paid?

7 The royalty to the BLM, not the royalty to the VA.

8 A Right. That's what I was trying to get into about that  
9 the rental amount of \$330 was limited and is no longer being  
10 paid.

11 Under the oil and gas lease you enter into a term,  
12 whatever it is, five or ten years, called the "primary term."

13 And during that primary term the lessee then has a right  
14 to go and drill and established production under the lease.

15 If a lessee does not drill a well within the first year  
16 of the oil and gas lease, then they can defer drilling for  
17 another year by paying a rental.

18 In the 1956 lease, and that was statutorily set, the  
19 rental amount paid to defer drilling under a lease was 50 cents  
20 an acre and that's where the 330 comes from, half of --

21 THE COURT: 335.

22 THE WITNESS: Okay. Sorry, yes. 335. The 50 cents  
23 an acre of the 670.

24 THE COURT: Fair enough.

25 THE WITNESS: Once a well is drilled, so let's say

1 that they pay the rental after the first year, that gets them a  
2 second year in the primary term. If they drill a well let's  
3 say in the second year, and a well starts to produce, now the  
4 lease is beyond is -- will be beyond the primary term and is  
5 now held by production.

6 And the 12 and a half percent royalty is now being paid  
7 to the BLM and that takes the place of that \$335 rental. The  
8 rental is no longer paid after royalties are being paid.

9 Q All right. Thank you.

10 So now that we have a better understanding of who  
11 exactly the royalties -- I know it is confusing with the  
12 difference between the royalties going to the BLM and royalties  
13 going to the VA, but under the 1969 lease, there is no royalty  
14 to the VA, correct, because there was no gift given by  
15 Occidental to the VA and since those wells are drilled into  
16 federal minerals and not private minerals, the 1966 lease  
17 agreement that we just discussed, that doesn't apply either,  
18 correct?

19 A Right. And where I need to refresh my memory is the dates  
20 of the two different leases.

21 The 1969 BLM lease was with Occidental to be able to  
22 drill north of Constitution Avenue.

23 But the 1966 lease is not an oil and gas lease, that's  
24 more like an easement, a license, a true license where the VA  
25 gave Occidental the right to slant drill on their surface in

1 consideration for the 1966 -- I'm going to call it license,  
2 easement instead of a lease agreement, was the two and a half  
3 percent royalty.

4 THE COURT: That's going to come back to the  
5 question that I want you to answer eventually, and not now,  
6 does that expand upon the total area of 670 acres in your 1956  
7 lease? Take your time with that, go through the documents but  
8 before you leave.

9 THE WITNESS: I can just based on the lease  
10 documents and I'm looking at the protective lease, the 1969.

11 THE COURT: Right.

12 THE WITNESS: It states in here that that covers  
13 70.58 acres. So that would be in addition to the 670 because  
14 there would be no reason to release anew any portion of the 670  
15 so I'm going to say yes, it expanded --

16 THE COURT: 70 acres.

17 THE WITNESS: 70.5 acres.

18 BY MR. GUADIANA:

19 Q Just to clarify, when you say "expanded," it's not that  
20 the 1969 lease had any amendment or effect on the 1956 lease,  
21 these are still two completely separate leases, just both with  
22 the BLM and for adjoining acreage?

23 A Yeah, both two separate, their own separate terms and  
24 conditions.

25 THE COURT: Well, and/or the VA. Remember, we're



1 getting back between BLM and VA, our '69 lease is with the VA,  
2 isn't it?

3 MR. GUADIANA: '66.

4 THE WITNESS: No.

5 THE COURT: '66 is with the VA?

6 THE WITNESS: Which --

7 THE COURT: I'm back to BLM. Is '66 with the VA?

8 THE WITNESS: Yes.

9 THE COURT: And is the '69 back with BLM?

10 THE WITNESS: Yes, sir.

11 THE COURT: And that's where we flip over.

12 THE WITNESS: Yes, sir.

13 BY MR. GUADIANA:

14 Q So to be clear, the only lease with the VA is the lease  
15 that allows a pass-through right, a subsurface pass-through  
16 right, for the well bore so that it can produce for minerals  
17 outside the VA Campus and Federal land?

18 A Right. And as I'm thinking about it, I think it benefits  
19 us to not call -- although it's termed a lease agreement, but  
20 let's don't call it a lease, let's call it a license, let's  
21 call it an easement, because that's really what it is. It's  
22 not an oil and gas lease from the VA, like the BLM leases this  
23 is just a right -- it's a trespass right, basically, to the VA  
24 and the consideration the VA received for giving that right to  
25 drill through the VA surface to private lands was a two and a

1 half percent overriding royalty interest.

2 Q All right. So, we talked about the 1966 lease, and I know  
3 that that was the lease that originally allowed for slant  
4 drilling outside of federal minerals.

5 Now there was some modifications to that 1966 lease  
6 later on, and I'd like to show you Exhibit 312.

7 THE COURT: Thank you.

8 BY MR. GUADIANA:

9 Q Now have you seen this document before, Mr. Rainbolt?

10 A Yes.

11 Q Can you explain exactly what that document is?

12 A I would have to refresh my memory on it.

13 Q It's entitled, "A revocable license for non federal use of  
14 real property," dated January 1st, 1997, between Westside  
15 Operating Partners, or Breitburn Energy, and the VA.

16 A If we go back to the original '66 lease we were looking  
17 at, I believe this is a replacement for that, that the parties  
18 are entering into a new lease agreement covering basically the  
19 same rights, generally speaking, as the 1966 --

20 Q So let's just walk through --

21 A -- easement license.

22 Q Let's walk through a couple of the provisions to this 1997  
23 revocable license with the VA.

24 Section 2, this is on page 2 of the document. It states  
25 that -- it states that "on July 21st, 1966, the Department of

1 Veterans Affairs leased a designated surface drilling site  
2 under the BLM lease Number 0138800," which is referencing the  
3 1956 BLM lease, "to Occi for a three-year term to also use the  
4 drill site for slant drilling of wells bottomed under land  
5 outside of the VA property."

6 So this references the 1966 lease agreement that we just  
7 discussed, which granted a two and a half percent overriding  
8 royalty for all wells bottom hold outside of the federal  
9 minerals.

10 A Correct.

11 Q Section 3 goes on to note that "after successive  
12 three-year periods from July 14, 1969, and terminating on  
13 October 1st, 1990, the succession of supplemental lease  
14 agreements was broken by allowing a supplemental lease  
15 agreement to expire on October 1st, 1990.

16 Occi USA as successor in interest to Occidental  
17 Petroleum continues to occupy and exercise those rights and  
18 benefits from use of said drill site as a surface location from  
19 which to remove petroleum and as a platform from which to drill  
20 wells as it did before.

21 Both parties therefore have found themselves without  
22 benefit of formal agreement and are now both desirous of again  
23 joining together in an agreement for their mutual benefit."

24 So, just reading this section, I understand this to mean  
25 that at some point in time the 1966 lease amendment terminated,

1 production continued on, and that the parties therefore wanted  
2 to into a new revocable license?

3 A Yes.

4 Q Now, Section 4 provides the consideration, and as you can  
5 see it's the same two and a half percent that was under the  
6 1966 lease, correct?

7 A Correct.

8 Q So now I'm going to show you Exhibit 203 and this is what  
9 is at the pinnacle of Bridgeland case in this --

10 THE COURT: Just a moment. The fundamental question  
11 I'm going to have to eventually decide is what principal  
12 benefit did the veterans receive then between either the '66 or  
13 the '69 lease and the 1997 lease. I'm still reading two and a  
14 half percent royalty.

15 THE WITNESS: Correct.

16 THE COURT: Okay. Any other increase -- or, I'm  
17 sorry, any increase?

18 THE WITNESS: No.

19 THE COURT: Okay.

20 Counsel?

21 BY MR. GUADIANA:

22 Q So have you seen this document before, Mr. Rainbolt?

23 A Yes.

24 Q Can you state what this document is?

25 A Well, it's titled Amendment Revival and Extension of the

1 Revocable License For Non Federal Use of Real Property  
2 Agreement and it was done in 2017.

3 This would replace the license or the document we just  
4 looked at, the previous revocable license. They're entering  
5 into a new license, I believe this one might have been for  
6 10 years, it goes to 2027.

7 Q I'm going to walk you through a couple of the provisions.

8 So, again, in the recitals, it notes the 1966 lease and  
9 how that terminated in 1990. And then it discusses the 1997  
10 revocable license, which you just saw. And then it's that  
11 "licensee is successor to Westside Operating Partners Limited  
12 and continues to occupy and exercise those rights and benefits  
13 from the use of said drill site."

14 And that it is "the desire of the parties to extend the  
15 primary term of said license, to adopt, ratify, revive,  
16 confirm, and extend said license and amend said license, all as  
17 hereinafter provided."

18 So, as I understand, this document relates back to the  
19 1997 revocable license, revives it and adds some new terms,  
20 correct?

21 A Correct.

22 Q So if you go to page 2, I'd like to talk about the main  
23 change that was made to this.

24 THE COURT: Just a moment. I want to make certain.  
25 This is negotiated now with the VA, the 1997 lease?

1 THE WITNESS: Yes.

2 THE COURT: And not BLM, correct?

3 THE WITNESS: Correct.

4 THE COURT: Explanation for that again? What is the  
5 explanation?

6 THE WITNESS: Well, it ties all the way back to the  
7 1966, let's say, easement license that was entered into that  
8 gave the VA the two and a half percent to start with.

9 THE COURT: But you and I are both in a quandary  
10 about the interrelationship of BLM back in '56 and then the  
11 switch to the VA, no matter what we call it, and then back to  
12 BLM, back to VA. And this 1997 is with the VA, not BLM; is  
13 that correct?

14 THE WITNESS: Correct.

15 THE COURT: Okay. Counsel.

16 BY MR. GUADIANA:

17 Q And just to clarify something that the judge just asked  
18 you. When we're talking about the interplay between the BLM  
19 and the VA, as I understand, every single time that the oil  
20 operator has a lease for federal minerals, they enter into that  
21 agreement with the BLM and that every single time the oil  
22 operator wants to drill outside of the federal minerals, they  
23 enter into that agreement with the VA?

24 A Correct.

25 THE COURT: Why? The subsurface historically has

1 belonged to BLM. Surface might be more appropriate for the VA.  
2 You are going to have to explain to me why, as we expand our  
3 underground, however we want to call it, acreage, that now  
4 we're dealing with the VA instead of BLM? I'm utterly confused  
5 by that.

6 THE WITNESS: Okay. My general understanding in  
7 California as to the ownership of the surface and the mineral  
8 estate, that that has never been settled.

9 THE COURT: I see.

10 THE WITNESS: There was even a fairly recent case  
11 that went up to California Supreme Court, and they did not  
12 decide it.

13 So, generally speaking, in California, the surface owner  
14 owns from the surface to the center of the earth.

15 The mineral owner in California is different than, let's  
16 say, back in Oklahoma and Texas where the mineral owner  
17 actually owns those minerals and everything. In California,  
18 it's been described as a profit a prendre, that the mineral  
19 owner has the right to go on the surface to extract his  
20 minerals, but he doesn't really own those minerals.

21 So you are dealing with these two separate --

22 THE COURT: Different down in Oklahoma and Texas.  
23 We do own those minerals, don't we?

24 THE WITNESS: Yes.

25 THE COURT: Okay. Counsel.

1 THE WITNESS: But, if I may --

2 THE COURT: Sure.

3 THE WITNESS: In 1966, what they are doing is that  
4 they are drilling a well on VA lands, the VA owns the surface.  
5 We can get into the BLM should be able to use the surface for  
6 the minerals, but let's just say that in these two ownerships  
7 of the estate, surface estate and the mineral state, the VA  
8 owns the surface. So Occi goes to the VA to get the surface  
9 owner's right to set up on their surface.

10 THE COURT: Maybe believing that they own the  
11 subsurface rights at that time, like Texas or Oklahoma. But at  
12 the same time, our original contract with Dowlen was with BLM.  
13 There is the confusion back and forth. We both agree to that,  
14 I think.

15 THE WITNESS: Right. But 1966, Occi is slant  
16 drilling a well for leases that the BLM does not own in its  
17 private ownership. They have taken leases from John Doe and  
18 Mary Smith.

19 THE COURT: But it's questionable that the VA owns  
20 those subsurface rights as well -- and "as well" is a bad pun  
21 but --

22 THE WITNESS: Right. The VA -- the VA, if you will,  
23 owns from the surface to the center of the earth.

24 THE COURT: Well, just a moment. I'm not sure of  
25 that.



1 THE WITNESS: My understanding on California law.

2 THE COURT: Well, that's questionable.

3 THE WITNESS: Okay. Fair enough.

4 THE COURT: Uh-huh.

5 THE WITNESS: So what a prudent operator does for  
6 slant drilling, at least my -- what I do in my practice,  
7 separate from this, is that I don't rely on the approval of the  
8 mineral owner to be able to slant drill through his minerals  
9 off or just get the surface owner. You definitely have to have  
10 the surface owner, but what you do is you get both of them to  
11 agree.

12 THE COURT: Exactly.

13 THE WITNESS: The surface owner and mineral owner,  
14 that way the lessee, the producer is covered.

15 THE COURT: Okay. Thank you. Counsel --

16 THE WITNESS: So --

17 THE COURT: No. I have got it. Thank you very  
18 much.

19 BY MR. GUADIANA:

20 Q And just to understand your testimony a little bit better.  
21 So when you talk about the mineral rights and -- so the surface  
22 owner owns from the surface to the center of the earth. And  
23 what the mineral owners really owns is this right to produce  
24 oil and gas, right? They don't really -- in California, at  
25 least, they don't own the oil in the ground. They have to go

1 in, produce it, capture it, bring it to the surface, and then  
2 it's theirs. And associated with those rights is the right to  
3 use the surface of that property to drill for the oil, correct?

4 A Exactly. Right. Is that they have the right to extract  
5 the oil and gas. My understanding in California, they do not  
6 -- the mineral owner does not own the oil and gas until it is  
7 captured at the surface.

8 And once it's captured at the surface, then they own it.  
9 And -- correct. And then, as we talked about, the difference  
10 between the dominant mineral estate over the surface estate,  
11 that mineral owner has the right, for a reasonable use of the  
12 surface, to go in and capture those minerals.

13 Q So, because this is -- at least the Sawtelle 2 and what  
14 this lease is, what the revocable licenses are granting, is  
15 really kind of this pass-through, subsurface pass-through  
16 through, like, the pore space to allow a well bore to go  
17 through the property. And because that well bore isn't  
18 producing from the oil underneath that property, it's not  
19 really the mineral owner's right to give that, correct? It's  
20 more the surface owner's right to give that, you know, well  
21 bore pass-through easement?

22 A That is correct. Going back about the -- what the surface  
23 owner owns. The thing is about getting the mineral owner to  
24 sign off on that also is an overabundance of caution -- this is  
25 going to get in the weeds a little bit, sorry.

1 But that as you drill through the mineral estate going  
2 to private lands, what if you encountered a zone, an oil and  
3 gas zone and you messed it up for the mineral owner to where  
4 that they couldn't produce it in the future. You could be  
5 liable to that mineral owner. That's why you get everybody to  
6 sign off.

7 But you are correct. The surface owner, you have got to  
8 get their approval to -- same as a trespass -- trespass through  
9 their surface estate as you are drilling to lands, lands that  
10 that surface owner does not own.

11 Q And when you just said the surface estate, do you mean  
12 both the actual surface and the rights in the pore space and  
13 stuff that are subsurface that still belong to the surface  
14 owner, correct?

15 A Correct.

16 Q All right. So let's go back to Exhibit 203. And thank  
17 you for that explanation.

18 So if we go to Section 3 on page 2 of Exhibit 203. It  
19 states that Section 4 of the 1997 revocable license shall be  
20 deleted in its entirety and is herewith amended to read.

21 And it states, As material consideration for the VA's  
22 cooperation with respect to this amendment, licensee agrees  
23 that commencing with the execution of this amendment and  
24 continuing throughout the remaining term of this license to  
25 donate a monthly monetary payment to the Disabled American

1 Veterans Los Angeles Chapter an amount that is equal to a two  
2 and one half percent overriding royalty on the total gross  
3 production of all oil, gas, and other hydrocarbons which are  
4 produced from any and all wells drilled under this license.  
5 And that the DAV LA's use of the aforementioned donated funds  
6 shall be solely for the purpose of providing transportation to  
7 veterans on and around the VA Greater Los Angeles Healthcare  
8 System campus.

9           So I understand that this amended the compensation  
10 language in the prior revocable license. It keeps the same two  
11 and a half percent royalty. But now it requires it, instead of  
12 being paid to the VA, to be paid to the DAV VA to fund a  
13 transportation program.

14 A       Correct.

15 Q       All right. So this is the license that is currently in  
16 effect, as you understand, that allows Sawtelle 2 to be drilled  
17 and produced on the drill site under the 1956 lease, correct?

18 A       Correct.

19 Q       So, I'd like to talk about -- you know, we talked about  
20 this interplay between the BLM and the VA.

21           And I want to get into that a little bit.

22           So, you know, one of the things that the judge is going  
23 to have to decide here is whether to uphold this lease -- or  
24 this license or not and to terminate it.

25           And I would like to go through some situations, you

1 know. If, for example, this Court terminates this license, is  
2 it still possible for Sawtelle 2 to produce through unitization  
3 or through, you know, obtaining consent of the BLM?

4 A Yes. The BLM has the right to -- you can call it, say,  
5 unitize or pool federal lands with other lands. And let's say  
6 the Sawtelle 2 well is producing from private lands is that  
7 those private lands could be pooled with the 1956 lease and so  
8 that the production from the Sawtelle 2 would then be shared  
9 between the private landowners and the BLM.

10 And once that happens, then the Sawtelle 2 well would  
11 continue to produce. If this license was terminated, the two  
12 and a half percent that is now going to DAV/LA's benefit would  
13 be extinguished. And that two and a half percent would no  
14 longer be paid.

15 Q The revenue would be -- from Sawtelle 2 would be going to  
16 the BLM under that situation and not the VA or any veterans?

17 A The royalty -- right, right. The royalty would be shared  
18 between the -- in that situation with the Sawtelle 2, the  
19 royalty would be shared between the BLM and the private mineral  
20 owners.

21 Q So, just my last set of questioning here.

22 Can you explain, kind of, the interplay of different  
23 rights that allow the Sawtelle 2 to produce? Because I know we  
24 have the operator. We have the VA. And we have these other  
25 mineral private owners that are out there.

1           You know, how does -- how does this all work? And what  
2 exactly is the right that the VA is giving under this license?  
3 Like, is that a narrow right? Is that an expansive right?  
4 What exactly is that?

5           A       As we have kind of alluded to it is that -- whenever we  
6 talk about the lease, but it is really a license, and it's more  
7 like an easement. Maybe even more -- think of it in terms of  
8 like -- just like a pipeline easement. But it's not the right  
9 to drill and produce oil and gas. So it is a very limited  
10 right.

11                   And the only thing the VA is giving up from their  
12 surface ownership is the right to drill through the subsurface,  
13 under the surface, as to the boundaries of their ownership and  
14 call it a right of trespass or, you know, license, easement,  
15 whatever you want to say. So it is a very limited right of  
16 what they are giving up. They are not -- as we know, the  
17 surface estate -- there is a bundle of rights that make up the  
18 surface estate. Well, this is just one -- one small right in  
19 that bundle.

20                   And, in my opinion, being compensated two and a half  
21 percent overriding royalty for giving up this limited right, I  
22 have never seen anything in my entire career as generous as  
23 that.

24                   THE COURT: Good deal. Good deal.

25                   THE WITNESS: Back in Oklahoma, we would say they

1 cut a fat hog.

2 THE COURT: I might write that into my opinion. I  
3 can understand that. Thank you.

4 BY MR. GUADIANA:

5 Q What do you generally see as compensation for this type of  
6 a right?

7 A I could give an example of a Whittier field in the LA  
8 basin that -- I work for another client. And leases were taken  
9 back there in the '60s and '70s. And they were going to be  
10 directionally drilling wells there because town laws, et  
11 cetera.

12 Is that incorporated in the oil and gas lease were all  
13 of these drill-through rights so that whenever the surface  
14 owners and a lot of times the mineral owners, they are both the  
15 same, that they would sign the oil and gas lease giving the  
16 right to drill is that part of the rights enumerated in the  
17 granting clause was these drill-through rights. And they gave  
18 the lessee the right to use their lands to drill-through, set  
19 up, you know, bottom wells on other lands without any  
20 additional consideration. It is part and parcel of the base  
21 lease.

22 Okay. Compare that to the two and a half percent  
23 overriding royalty.

24 There was another operator in its lease was talking  
25 about that if they had drilled through the lands and if the

1 lease expired, then the operator would pay a consideration of a  
2 dollar per yard per year for the length of that well bore  
3 underneath its property. It was minimal. De minimis.

4 Q So this is a very, very generous payment for this type of  
5 a right?

6 A Can I go back to cutting the fat hog.

7 Q Got it.

8 So last question for you -- or, I guess, two more  
9 questions.

10 So if this license is terminated, does it have any  
11 impact on Bridgeland's current use of the surface of its  
12 current drill site or its rights to the replacement drill site?

13 A None.

14 Q So it will not change their surface footprint on the VA  
15 campus at all?

16 A Correct.

17 Q And that is because those rights come -- that were granted  
18 through the BLM -- or by the BLM through the BLM leases?

19 A Through the 1956 lease, yes.

20 Q So now my last question for you.

21 Considering the potential for Sawtelle 2 to continue to  
22 produce through either an agreement with BLM or through  
23 unitization with BLM and the fact that it's used -- that this  
24 royalty on Sawtelle 2 is used to fund a transportation program  
25 for veterans, and, as you have noted, it's an extremely



1 generous royalty and compensation paid, would you say that this  
2 license principally benefits veterans?

3 A 100 percent.

4 MR. GUADIANA: No further questions, Your Honor.

5 THE COURT: Okay.

6 Would you like a recess or cross-examination?

7 Why don't we turn back to the VA first. Would that be  
8 appropriate? And HUD. Any questions?

9 MR. ROSENBERG: We don't need a recess.

10 THE COURT: Need a recess?

11 MR. ROSENBERG: No. No, we don't.

12 THE COURT: Do you want to ask any questions in this  
13 area?

14 MR. ROSENBERG: I don't believe I will be asking any  
15 questions.

16 THE COURT: Let me start with plaintiffs and come  
17 right back to you as a courtesy, counsel?

18 MR. SILBERFELD: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. SILBERFELD:

21 Q Mr. Rainbolt, the original 1956 BLM lease, did it have a  
22 term?

23 A I would have to look at it. Normally, I think those BLM  
24 leases would be that -- the primary term we talked about, the  
25 amount of time to drill a well, those were ten years I think

1 back then, but this one might have been five years.

2 Q Okay. And --

3 A It would have been in the lease, whatever the term --  
4 whatever the primary term would be, it would have been set out  
5 in the lease.

6 Q And that '56 BLM lease, is that, to your understanding,  
7 still live and operational as a legal document?

8 A Yes. The oil and gas lease is -- the primary term for  
9 whatever it is, let's say five years, and so long thereafter as  
10 oil and gas is produced. And oil and gas has been produced  
11 ever since the first well -- or the first wells drilled under  
12 that 1956 lease.

13 Q So the '56 lease is a viable operating lease so long as  
14 there is oil in the ground?

15 A So long as oil is being produced to the surface.

16 Q I see.

17 A Yes, sir.

18 Q The 1969 lease that granted -- I forget who it was granted  
19 to, but --

20 A Occi.

21 Q -- granted that area north of Constitution, did that have  
22 a term, or is it the same?

23 A I believe I saw where that term was five years.

24 Q Okay. And was that renewed, as far as you understand it?

25 A Well, my understanding, that well was drilled from the

1 surface location south of Constitution Avenue and bottomed in  
2 that protective lease. So that's producing, as far as I know.  
3 And it would be the same classification as the 1956 lease as  
4 long as oil and gas is being produced.

5 Q The -- we have talked about the term of the '66 lease. It  
6 was -- the '66 lease with the VA.

7 That lease --

8 A Well, no. The -- oh, I'm sorry. '66 with the VA. Right.

9 Q Yeah. '66 with the VA. That one had renewable provisions  
10 in it, but it seemed to fall into a noncontractual agreement  
11 for a period of, maybe, seven years in the '90s?

12 A It appears, yeah. One would have to go back through the  
13 file to see what happened. But it appears what happens -- and  
14 it does -- is that the renewal of that -- I'm going to still  
15 call it a license easement-type agreement, '66 -- slipped  
16 through the crack, and both Occidental and the VA did not renew  
17 it.

18 And then later on, somebody discovered that, hey, this  
19 lease -- this is what I'm speculating -- somebody discovered  
20 that that license expired. We need to go get a new one. And  
21 that's whenever they entered into the 1997, I believe, license.

22 Q Right. And that agreement, did it renew -- based on your  
23 review of the records -- regularly and periodically until we  
24 get to 2017?

25 A I believe there were recitations about, yes, that it kept

1 renewing in successive periods.

2 Q All right. And then Exhibit 203, which is the last  
3 document counsel showed you, that was an agreement entered into  
4 between the VA and -- I think it's Breitburn at this point.  
5 And that was entered into in April of 2017?

6 A 2017, I would have to see if it was April. This says 7th  
7 of March, 2017.

8 Q Okay. And that was for a period of ten years?

9 A Correct.

10 Q Okay.

11 MR. SILBERFELD: That's all the questions I have.  
12 Thank you.

13 THE COURT: Okay. On behalf of the VA or HUD?

14 MR. ROSENBERG: Nothing from me.

15 THE COURT: Back to Bridgeland, please.

16 MR. GUADIANA: No further questions. But I would  
17 like to move to have Exhibits 202, 203, 310, 311, 312, 313, and  
18 316 moved into evidence.

19 THE COURT: Each are received. Just check with  
20 Kerlan. Make sure you have got everything you refer to into  
21 evidence.

22 (Exhibits 202, 203, 310, 311, 312, 313, and 316  
23 received into evidence.)

24 MR. GUADIANA: That's all, Your Honor. Thank you.

25 THE COURT: Okay. We have got quite a bit at stake

1 here. I'm going to have counsel both jointly come up and use  
2 this chart for just a moment. That is kind of like an order.

3 We're going to do a little bit of math here. We're  
4 going to be writing on an easel. So let's bring that out in  
5 front. And let's put this other diagram in the back.

6 Now, I'm going to give you some facts I want you to  
7 assume for just a moment.

8 Based on Bridgeland's complaint -- and they can check  
9 this -- they valued a barrel at \$57.60. And counsel will go  
10 back and verify his complaint. He's right over there nodding  
11 his head. See.

12 And let's get this math out here so we can all see it.  
13 Okay?

14 So you are operating -- and I get my terminology turned  
15 around. I'm not an oil person. I don't understand oil yet,  
16 but I will.

17 You operate 11 wells out at the West LA VA campus,  
18 correct? 11 wells.

19 THE WITNESS: Okay.

20 THE COURT: Okay?

21 THE WITNESS: Okay.

22 THE COURT: See. He's nodding. Okay.

23 One of those wells we know is Sawtelle 2. And we know  
24 that that is exclusively used for slant drilling. I think it's  
25 the fourth wellhead over, but I -- okay. He's nodding. It's

1 okay.

2 MR. GUADIANA: Third well down.

3 THE COURT: So far.

4 Now, Sawtelle 2 produces approximately 130 barrels of  
5 oil per day.

6 So write down 130 barrels times \$57.60. And I'm doing  
7 some round-off figuring. And that should produce about  
8 \$2,695,008 in revenue each year.

9 Now, you can check my math. And let's just assume that  
10 that is in the ballpark.

11 So thus assuming that no other well is used for slant  
12 drilling, our \$2,695,008 is the annual amount Bridgeland brings  
13 in from slant drilling. Are you okay with me so far?

14 MR. GUADIANA: Yes.

15 THE COURT: All right. Now, Bridgeland claims in  
16 their papers that they generate \$6,400,000. So, Counsel, write  
17 that down for just a moment. And there is a lot of discrepancy  
18 over the royalty payments, depending upon which document I  
19 read.

20 Bridgeland, in their complaint, alleged that they pay  
21 \$167,000 in royalty payments, which is 25 percent of the  
22 \$6.4 million.

23 And see if counsel will nod his head or not.

24 MR. GUADIANA: Sure.

25 THE COURT: Okay. Thus, according to the numbers

1 that Bridgeland has provided to the parties, slant drilling --  
2 if we take \$6,400,000 and if a Court invalidated the lease  
3 concerning slant drilling would be a reduction of \$2,095,008.

4 And you can round that off. And this would be 42 percent --

5 Slow down. We will just make you do the math now.

6 \$2,695,000.

7 Now, you can round that off to make the math simple.

8 But 42 percent of the profit right now that Bridgeland depends  
9 upon is from Sawtelle 2 and slant drilling, isn't it?

10 That's a yes.

11 MR. GUADIANA: Yes.

12 THE COURT: Now, take your time with the math. It  
13 took me a long time squinting at these documents. And I'm not  
14 sure. I'm just asking you as my expert now.

15 Now, plaintiffs, though, in the preliminary motion for  
16 approval gave me different figures on the royalty. You don't  
17 know this, but I'm going to tell you that they stated that the  
18 royalty payment from the plaintiffs' perspective was between  
19 75,000 and 125,000. And you will see counsel nod his head in  
20 just a moment. Just take that as a given.

21 So assuming plaintiffs' number is correct, the annual  
22 revenue from the drill site now is between 3 million and 5  
23 million -- and you can do the math. So according to the  
24 numbers the plaintiff provides, the percentage of revenue  
25 attributable to the slant drilling would, thus, be between 53

1 percent and 89 percent. Now, you can check those numbers later  
2 on during the recess because you will be back.

3 Now, Bridgeland represents back to the Court that the  
4 drill site generates around 280 barrels of oil per day.  
5 Sawtelle 2, the only drill used exclusively for slant drilling,  
6 generates, once again, 130 barrels of that 280. Thus,  
7 according to that calculation, it's not 42 percent, but it's  
8 46 percent of the oil produced is attributable to Sawtelle 2  
9 and the slant drilling. Understood?

10 So what we have got is a situation with a high risk for  
11 all parties here. If the Court signs injunctive relief on  
12 slant drilling, the prior lease may be in effect, but we have  
13 got ten wells drilling in an old subsurface that is drying up.  
14 And the slant drilling on the 70-acres plus is enjoined.

15 And that's why I'm asking you to be certain and check  
16 your documents over the recess if there is any other expansion  
17 of these 70 acres.

18 Got it?

19 THE WITNESS: Right.

20 THE COURT: Am I clear? Because sometimes I  
21 miscommunicate.

22 THE WITNESS: Right.

23 THE COURT: Repeat back to me what I just asked you  
24 so I'm sure.

25 THE WITNESS: To confirm that the 1969 lease was not



1 an expansion of the nineteen -- or is an expansion of the 1956  
2 lease.

3 THE COURT: And how much? Am I dealing with  
4 70.5 acres or more?

5 THE WITNESS: Right.

6 THE COURT: Okay. Now, one of the things I will  
7 express to the counsel that I was concerned about was that if I  
8 would have approved their settlement, which went from two and a  
9 half percent -- and you are aware of the settlement, right?

10 THE WITNESS: Yes.

11 THE COURT: So would you put up -- it's at the top  
12 of the page. It's going to be in the settlement documents.  
13 It's right here.

14 Yeah. You will find it. It's at the top. Right there.

15 Now, I want to show you something. You tell me if this  
16 is a good deal or not. Was that fat on a hog?

17 THE WITNESS: Okay.

18 THE COURT: Okay. All right.

19 MR. DU: Are you asking for the royalty percentages,  
20 Your Honor?

21 THE COURT: Huh?

22 MR. DU: The royalty percentages? Is that what  
23 you --

24 THE COURT: Yep.

25 Now, weighing this, I've got to decide, does this

1 principally benefit the veterans or not.

2 First, I expressed to counsel my concern why  
3 transportation for veterans who have brain trauma or amputees  
4 is dependent upon any kind of a lease from any entity.

5 That's why this isn't a line item of appropriation that  
6 the VA has responsibility for because transportation may be  
7 argued is critical.

8 But regardless of that expression -- and I'm still  
9 mulling that over -- how are we doing with our royalty?

10 Now, if counsel came in -- and I think in good faith,  
11 I'm not chiding counsel -- and said, Judge, I have got the  
12 greatest fat on the hog deal you have ever seen, we are going  
13 to go from two and a half to 5 percent.

14 Keep going down. You will see the royalty chart. It's  
15 at the top. No. It's a chart.

16 Well, I can work with this. It doesn't matter.

17 If you go down to 5 percent, I have to get to \$130 per  
18 barrel, don't I?

19 THE WITNESS: Yes.

20 THE COURT: So my 5 percent means that I've got to  
21 be at \$130 a barrel before 5 percent even kicks in?

22 THE WITNESS: Yes.

23 THE COURT: When have we ever gotten \$130 per  
24 barrel?

25 THE WITNESS: Excuse me?

1 THE COURT: When have we ever gotten to \$130 per  
2 barrel? I will argue there is a brief period of time we  
3 approached it, but you tell me when we've gotten to \$130 per  
4 barrel and how long a period of time.

5 THE WITNESS: From my memory, I don't remember how  
6 long, but in 2008 --

7 THE COURT: Right.

8 THE WITNESS: -- I do remember it hitting 140 a  
9 barrel.

10 THE COURT: How long?

11 THE WITNESS: I don't remember.

12 THE COURT: Well, we opened up the reserve,  
13 remember? Knocked it down real quick because the politicals  
14 got real concerned about gas prices.

15 You go check the duration and get back to me, you can  
16 Google it if you want to, but it's a very short period of time  
17 we were above 130.

18 THE WITNESS: Right.

19 THE COURT: Okay. Tell me when we were between 100  
20 and 130? We've been there before, by the way, how long a  
21 period of time?

22 THE WITNESS: I don't know.

23 THE COURT: What are we today, we're about 76, \$78?

24 THE WITNESS: 75, 76. Yes.

25 THE COURT: As low as 41?

1 THE WITNESS: Excuse me?

2 THE COURT: We've been as low as 41 and 39?

3 THE WITNESS: Even lower.

4 THE COURT: Even lower.

5 THE WITNESS: Back in 2008 I remember when it hit  
6 \$140 a barrel, then we went to the great recession, and I  
7 remember oil going down to \$15 a barrel, I think Kern River  
8 crude was \$6.

9 THE COURT: So, for the veterans to get a 4 percent  
10 increase, we've got to be over \$100 a barrel, don't we?

11 THE WITNESS: Yes.

12 THE COURT: Now, to move from our 2.5 percent just  
13 to three and a half percent, which is just one percentage point  
14 more, the veterans have to be at \$90 or above.

15 THE WITNESS: Yes.

16 THE COURT: Now I'm going to do this, I'm going to  
17 assume right now, some kind of median figure and I'm going to  
18 arbitrarily pick \$90 or above.

19 I want you to help -- and all counsel went to great  
20 schools so they will do some math right in front of us right  
21 now. I want you to take at \$90 a barrel times either 130 or  
22 280, it doesn't matter, and I want you to compare three and a  
23 half percent compared to two and a half percent, one percentage  
24 point raise and tell me how much additional money I'm getting  
25 in that one percent raise over \$130 a barrel -- I'm sorry, over

1 \$90 a barrel -- \$90 a barrel at \$130 a barrel -- 130 barrels  
2 and 280 barrels. Take your time with that.

3 THE WITNESS: I was curious as to the numbers, where  
4 we are right now --

5 THE COURT: No, no, just help -- I've got all day,  
6 this is all I want to do right now.

7 THE WITNESS: Okay.

8 THE COURT: In other words, I'm want to know if  
9 we're talking about million dollars the veterans are receiving,  
10 you know, a couple, \$10,000.

11 MR. SILBERFELD: To be clear, Your Honor --

12 THE WITNESS: Well --

13 THE COURT: Not per day.

14 MR. SILBERFELD: Do you want to do it by year?

15 THE COURT: I want to know -- because remember --  
16 hold on. I've got different figures coming from you folks.  
17 I've got a low of 67,000 up to argued \$150,000. You can pick a  
18 median range if you want to.

19 I think when we calculate 1 percent you are going to  
20 find it's chump change, but put it up there. Do quiet  
21 calculating now. So whether it's \$67,000 so that 1 percent  
22 isn't going to raise it appreciably and if it's, say, 167,  
23 which is 1,000, which is the high end it's not going to  
24 increase it appreciably.

25 But the question is we're dealing \$10, \$20,000, is that

1 a principal benefit to the veterans. So right now, if our  
2 royalties, according to the plaintiff, is between 75,000 and  
3 125,000 in royalty and we have simple math, without all of this  
4 machination, a 1 percent increase. What is that? 1 percent  
5 increase. And take the range, take 100 -- go to the papers,  
6 75,000 -- or, I'm sorry, 75,000 the lower range and 125,000,  
7 that's the plaintiffs' figure, what a 1 percent increase?

8 MR. SILBERFELD: About \$200,000.

9 THE COURT: No.

10 MR. GUADIANA: I believe it's about \$91,000, because  
11 we're adding on instead of just right now -- right now under  
12 the license we're only getting a two and a half percent royalty  
13 on the Sawtelle 2 production. This increases it both on the  
14 Dowlen wells that are producing and the Sawtelle 2 wells, which  
15 are the wells producing on the property, so we take this bigger  
16 number and it's not --

17 THE COURT: Just a moment, I'm going to take your  
18 number now. You represented to the Court that it's 2.5 percent  
19 of \$6.4 million.

20 MR. GUADIANA: Yes.

21 THE COURT: Uh-huh?

22 MR. GUADIANA: Yes.

23 THE COURT: And I'm going to take the higher number  
24 that the veterans are receiving to start with, \$160,000.  
25 That's two and a half percent, right? Now I raise this to

1 three and a half percent, what percentage point, what's  
2 one percentage point increase?

3 MR. GUADIANA: Off of those numbers, at about 2.5 we  
4 get to about --

5 THE COURT: It's about 16 to \$20,000, isn't it?

6 It seems to me pretty simple, no matter how you  
7 calculate this, if this is 160,000 royalties, taking his  
8 figures or I take yours at 75, and that's at two and a half  
9 percent and I'm moving down to three and a half percent, that's  
10 a 1 percent increase, right? What's 1 percent of --

11 MR. GUADIANA: But, Your Honor, the 160,000  
12 represents a two and a half percent royalty.

13 THE COURT: Okay, fair enough.

14 MR. GUADIANA: So we take \$160,000 we divide that by  
15 2.5 percent.

16 THE COURT: Fair enough.

17 MR. GUADIANA: Then we multiply that by 1 percent,  
18 it comes out to 64,000.

19 THE COURT: Okay. Then put up 64,000. Fat on a  
20 hog, principal benefit to the veterans.

21 THE WITNESS: Absolutely.

22 THE COURT: Fair enough.

23 THE WITNESS: If I may though so that we're not  
24 comparing apples and oranges, my understanding on the  
25 settlement agreement, they're getting their override from one

1 well under the settlement agreement with the escalating royalty  
2 they're getting it on all of the production now. So in instead  
3 of only getting an override on 130 barrels, they are getting it  
4 escalated on 200 --

5 THE COURT: But here's the real fat on the hog and  
6 that is if the Court agrees with that settlement agreement and  
7 goes along with this and I'm basically giving in perpetuity the  
8 right to Bridgeland to drill slant wells in the future, not  
9 only Sawtelle 2 but the real benefit is that these slant wells  
10 go on forever. That is the real issue, isn't it?

11 THE WITNESS: Well --

12 THE COURT: Yes.

13 THE WITNESS: Well, except I don't see that as an  
14 issue. I would see the VA would want to encourage drilling as  
15 many wells as possible so that they would continue to get  
16 increase.

17 THE COURT: Really? I will see if that's their  
18 position in their argument.

19 THE WITNESS: Am I thinking that right?

20 THE COURT: I don't know. I'm going to find out.

21 Why don't you step down and check that acreage for me,  
22 we will take a 15 or 20-minute recess.

23 Thank you, counsel.

24 (Morning recess.)

25 THE COURT: Where is the witness? We'll have him



1 return to the stand. Ask the gentleman if he can return to the  
2 stand.

3 Mr. Rainbolt, thank you.

4 Did you have time to look at documents concerning the  
5 original 670 acres plus the 70.5 acres? Is there additional  
6 acreage subsurface subject to drilling?

7 THE WITNESS: I was able to look at the two leases  
8 and they are the '56 lease is one lease that's 670 acres.

9 THE COURT: 670.

10 THE WITNESS: The '69 lease --

11 THE COURT: 70.5.

12 THE WITNESS: -- is a complete separate lease in and  
13 of itself.

14 THE COURT: That is 70.5 acres.

15 THE WITNESS: Yes, sir.

16 THE COURT: And my question is: Is there any  
17 additional subsurface acreage besides those two leases?

18 THE WITNESS: Well, you have the Sawtelle private  
19 leases that are outside of the BLM lands.

20 THE COURT: And all of these leases -- another way  
21 of asking it is: What is my total acreage in all of these  
22 leases put together, subsurface? I think it's 70.5 and 670,  
23 but I don't want to write that if I'm wrong.

24 THE WITNESS: Those are the correct acreage numbers  
25 for the Bureau of Land Management leases.

1 THE COURT: Okay. So I'm dealing with 670, plus  
2 70.5.

3 THE WITNESS: Correct. As to those leases.

4 THE COURT: Okay. Yes.

5 MR. GUADIANA: Your Honor, could I just ask --

6 THE COURT: Just a moment. I've got more questions  
7 and we've got all day, trust me.

8 I still don't understand, I apologize to you and  
9 counsel, that if I took the present \$160,000 in annual royalty  
10 payments that Bridgeland states that they are paying, so I'm  
11 going to take the high end, give them benefit, and I'm going to  
12 take the low end, giving the plaintiff the benefit, where they  
13 propose it's \$75,000 at the low end.

14 I still don't understand the math if it's a one percent  
15 increase from two and a half percent to three and a half  
16 percent, which is one percent at 280 barrels a day, how that  
17 raises \$64,000 -- no, that may be the correct math, I've got to  
18 go home and do that tonight, okay. Is that the correct math?

19 THE WITNESS: You have the price increase in there  
20 also.

21 THE COURT: Yes. I'm just taking their figures.  
22 Bridgeland represented to me it was \$57.60 in their complaint.  
23 Okay? I'm just taking their figures.

24 THE WITNESS: Right.

25 THE COURT: And all I've got are these ranges to

1 work with. I could do that independently at Crude Today and  
2 look it up, I'm not doing that. I'm taking plaintiffs' low  
3 figure of 75,000 and I'm taking Bridgeland Oil's high figure of  
4 160,000, that 1 percent increase would lead to about \$60,000?

5 THE WITNESS: I don't know what those base royalty  
6 numbers you're talking about, how -- where those are coming  
7 from or what they were computed on. I mean, are they talking  
8 about the BLM royalties plus the overrides? I would have to  
9 see what was used to come up with 160.

10 THE COURT: I'll compute it tonight. They may be  
11 absolutely right.

12 What value of this land -- is this land to the veterans?  
13 In other words, you weren't with us on a little walk we took a  
14 couple of days ago, but I don't have an environmental impact  
15 report on what I'm going to call the swapped-out land to the  
16 south.

17 THE WITNESS: Yes.

18 THE COURT: I don't know if the northern parcel,  
19 which is north of Constitution is going to have a tussle within  
20 the VA over what I'm going to call cemetery land.

21 THE WITNESS: I'm not familiar.

22 THE COURT: I don't know, either. Well, yeah --

23 THE WITNESS: I don't have the lay of the land.

24 THE COURT: Well, north of Constitution you  
25 testified to that parcel of land.

1 THE WITNESS: Which was relinquished, yes.

2 THE COURT: Okay. But also there is some cemetery  
3 and the VA has this bifurcated, trifurcated system of  
4 responsibility, and I don't know what tussle in the future the  
5 cemetery folks over at the VA are going to be in, you know, if  
6 this if this land is a attempted to be developed.

7 THE WITNESS: Okay.

8 THE COURT: Another universe, too. I'm going to  
9 turn you back to counsel, I want to thank you for your  
10 courtesy.

11 Counsel?

12 BY MR. GUADIANA:

13 Q So, Mr. Rainbolt, just to clarify, I know the Judge asked  
14 about the total acreage and you explained that the total BLM  
15 acreage was the 670 plus the 70, but that there were additional  
16 leases that Bridgeland has the right to operate, the Sawtelle  
17 private leases, and those are outside of the VA grounds,  
18 outside of this 670 plus 70 mineral acres.

19 Do you have any idea about the size -- the approximate  
20 size of those leases?

21 A Looking at a map, and a general outline of the Sawtelle --  
22 where those Sawtelle leases are and where the Sawtelle 2 wells  
23 are producing, it appeared to be about 100 acres.

24 Q Thank you.

25 MR. GUADIANA: No further questions, Your Honor.

1 THE COURT: Counsel, do you have any additional  
2 questions?

3 MR. SILBERFELD: No.

4 THE COURT: Sir, I want to thank you for your  
5 courtesy, it's been a pleasure meeting you and I will find a  
6 way to get in a fat hog. Just joking with you, okay? You have  
7 a good day, now.

8 Counsel, would you like to call your next witness,  
9 please?

10 MR. GUADIANA: We just need five minutes to bring  
11 the witness up from downstairs.

12 THE COURT: Do you want me to stay here or -- I will  
13 be back.

14 MR. ROSENBERG: Actually, while we're waiting I want  
15 to bring at issue the attention of the Court, it's an issue I  
16 became aware of just in the last few minutes or so, in regards  
17 to the demonstrative on the landfill issue we provided  
18 yesterday and I want to flag a limitation on that map, which  
19 was prepared very quickly.

20 That limitation, if you notice the yellow circles that  
21 reflect the thousand-foot radius, that is 1,000 feet from where  
22 VA believes to be the center of each of the three landfill  
23 sites.

24 But those sites are not obviously a singular point and  
25 they're irregularly shaped and VA is still ascertaining --

1 we're trying to ascertain the exact scope. So it's an estimate  
2 but, you know, that is subject to change depending on where the  
3 landfill boundaries actually are.

4 THE COURT: I took it to mean that. I took it to  
5 have three concentric circles because each landfill you were  
6 taking a thousand feet from each landfill.

7 MR. ROSENBERG: Right. There may be an argument  
8 that -- and there was another exhibit that had the purple  
9 blobs, I can't see from here whether those purple blobs are on  
10 that map or not.

11 THE COURT: They are.

12 MR. ROSENBERG: Those purple blobs represent where  
13 VA believes the landfills to be. There could be an argument  
14 that it would need to be 1,000 feet from the edges of those  
15 blobs, but at this point, that's still something that VA is  
16 working to ascertain and I don't that they have any reason to  
17 believe that it substantively changes any of the particular  
18 buildings that we've been discussing.

19 THE COURT: If I was writing right now, I don't know  
20 how important this is yet, I would assume you took the center  
21 of the upper landfill area and this is your concentric circle.  
22 You took the center of the landfill next to it -- come on up so  
23 you can see.

24 MR. ROSENBERG: Oh, sure.

25 THE COURT: This is your concentric circle. Then

1 you took the center of your bottom landfill and this is your  
2 concentric circle.

3 MR. ROSENBERG: That is correct. The potential  
4 modification is we explore this -- or VA explores this issue  
5 further is that the circles -- the purple blobs look more like  
6 ovals and one would need to draw 1,000 feet from the edge of  
7 each of those ovals.

8 THE COURT: I have assumed, if I was writing right  
9 now, that this is the center. Later on what you are saying is  
10 that depending upon -- strike that.

11 That if I measured from the outer it could change the  
12 concentric zone?

13 MR. ROSENBERG: Exactly.

14 THE COURT: Thank you.

15 Your next witness, please.

16 MR. GUADIANA: Thank you, Your Honor. Bridgeland  
17 would like to call Vijay Kulkarni.

18 THE COURT: Thank you, sir, would you be kind enough  
19 to raise your right hand, please.

20 THE COURTROOM DEPUTY: Do you solemnly swear that  
21 the testimony you are about to give in the cause now pending  
22 before this Court, shall be the truth, the whole truth, and  
23 nothing but the truth, so help you God?

24 THE WITNESS: Yes.

25 THE COURT: Thank you, sir, would you please be

1 seated here in the witness box, it's just to my right.

2 What I most worry about, the two steps are easy to  
3 navigate, it's the small ledge that I don't want you to trip  
4 on.

5 THE WITNESS: Okay.

6 THE COURT: Do you see it?

7 THE WITNESS: Yes.

8 THE COURT: Sir, after you are comfortably seated,  
9 would you face the parties. Would you state your full name?

10 THE WITNESS: Vijay Kulkarni.

11 THE COURT: And we're going to slow you down  
12 already.

13 THE WITNESS: Vijay with a "V."

14 THE COURT: V --

15 THE WITNESS: V-I-J-A-Y.

16 THE COURT: V-I-A-G-Y.

17 THE WITNESS: It's V-I-J-A-Y.

18 THE COURT: Just a moment. I'm sorry, V-I-J-A-Y?

19 THE WITNESS: That's right.

20 THE COURT: My apologies. And your last name, sir?

21 THE WITNESS: K-U-L-K-A-R-N, as in Nancy, I.

22 THE COURT: How do you pronounce that?

23 THE WITNESS: Kulkarni.

24 VIJAY KULKARNI,

25 having been duly sworn,



1 testified as follows:

2 THE COURT: Thank you, it's a pleasure.

3 Counsel, direct examination please.

4 DIRECT EXAMINATION

5 BY MR. GUADIANA:

6 Q Thank you, Mr. Kulkarni, can you explain -- you've been in  
7 the oil and gas industry for a while, can you just explain your  
8 background?

9 A Sure. I have a bachelor's in chemical engineering, I have  
10 a master's in petroleum engineering, I have an MBA in oil and  
11 gas management as well. I've been working in the oil and gas  
12 industry for over 16 or 17 years now.

13 I started my career working in Bakersfield with a small  
14 mid-size company and then I worked with Occidental Petroleum,  
15 or Occi down in Long Beach for about 10, 11 years.

16 I have worked overseas as an expat for about a year and  
17 a half managing offshore, as well as onshore oil and gas  
18 business.

19 So my background is from managing engineering to  
20 managing projects working with the City of Long Beach, State of  
21 California, Government of India, managing policies as well as  
22 just managing oil and gas business for the companies.

23 Q And when did you join Bridgeland?

24 A I joined Bridgeland in November of 2023.

25 Q What is your current position at Bridgeland?

1 A My title currently at Bridgeland is senior engineer, I do  
2 manage the business for Bridgeland, I work very closely, with  
3 Mr. Ward, who is the owner of the company.

4 THE COURT: Just a moment. Slow down just a little  
5 bit so my court reporter catches up.

6 Counsel, your next question?

7 BY MR. GUADIANA:

8 Q Can you explain some of your general job duties as  
9 Bridgeland?

10 A Yes, I manage the P&L, which is the profit and loss for  
11 the business. I do general oversight of oil and gas business  
12 for Bridgeland in different oil fields. I also work with, you  
13 know, the State government agencies managing the regulations  
14 and policies, making sure we're in compliance with all of that.

15 I manage, you know, the people side of the business,  
16 work with our HR firm, you know. I kind of work with the  
17 accounting department as well.

18 So, you know, while I focus on the engineering aspect, I  
19 do manage the overall business for Bridgeland from an oil and  
20 gas perspective.

21 Q Thank you. And I'm going to ask you to slow down in your  
22 answer just for the court reporter's sake.

23 A Right.

24 Q Can you -- you know, what exactly does Bridgeland do?

25 A So Bridgeland has gas assets here in Southern California

1 as well as there is a few real estate or land holdings that  
2 Bridgeland has.

3 So on an average, Bridgeland produces about 1,100 to  
4 1,200 barrels of oil every day here Southern California from  
5 five different fields. That's what the primary business is.

6 Q Do you know how Bridgeland obtained its rights to the  
7 drill site that is in -- and the minerals that are produced on  
8 the drill site that is on the West Los Angeles Veterans  
9 Administration Campus?

10 A So Bridgeland acquired properties from Breitburn Energy  
11 back in 2021 and that's how it got access to this drill site  
12 here.

13 Q And about how many wells are on the site and what is the  
14 status of those wells, what is the general status of those  
15 wells?

16 A So in the Sawtelle field there are 15 wells total.

17 There is about five active wells producers, the other 11  
18 wells are idle. The field produces about -- when everything is  
19 up and running it produces about 200 to 250 barrels per day.

20 THE COURT: Now just a moment. So the range is 200  
21 to 250 barrels a day?

22 THE WITNESS: Whenever everything is running. Right  
23 now the field is making about 100, 80 to 100 barrels, but if  
24 all of the wells are pumping fine that's how much it could  
25 produce.

1 THE COURT: Now just a moment. So about 100 barrels  
2 a day at the present time?

3 THE WITNESS: Uh-huh. Right.

4 THE COURT: Not 280?

5 THE WITNESS: Not today. Last couple of months it's  
6 been making 100, 120 on average.

7 THE COURT: Counsel?

8 BY MR. GUADIANA:

9 Q So can you explain why the amount of oil produced  
10 fluctuates? Because I understand at certain times the Sawtelle  
11 field has done 280 barrels a day, other times it's much less.  
12 Can you just kind of explain the economics and just, you know,  
13 the different issues that can arise with wells because, you  
14 know, I want you to kind of explain to the Court how production  
15 doesn't stay flat in an oil field and, you know, it differs  
16 every day.

17 A Yeah, sure. So, as I said, we have a total of 15 wells,  
18 out of that only five wells are pumping right now. So the  
19 other ten wells, what it means is they are not pumping.

20 For an oil well to pump, the fluid, oil and gas and  
21 water, is sitting in the ground about 6 to 8,000 feet below  
22 surface, so it takes a lot of energy and a mechanical pump to  
23 pull that oil and water from that depth up to the surface.

24 And it's all mechanical different parts for pump and  
25 tubing, so if the pump wears out, and depending on where the

1 oil price is, depending on how much cost it is to fix it,  
2 bringing the equipment over the hill from Bakersfield, because,  
3 you know, there's not a lot of equipment remaining around here  
4 anymore for oil and gas, so we have to understand what the cost  
5 it would take to fix that well. When the pump breaks, either  
6 down hole or on the surface, how much money we have doing this,  
7 what we expect the oil price to be for the next 12 months, is  
8 that money going to come back from a profit or a return  
9 perspective.

10 And once we understand that and once we have done our  
11 economic model, then we can make a decision to either go fix  
12 that well or leave it down until we feel the oil prices are  
13 going to come back up, where it would be break even or  
14 profitable to the company to fix that well.

15 So not every single drop of oil is the same value to  
16 everybody, all of the state corridors.

17 So that's why every well is different. It takes  
18 different costs to pump every well, then when we sell the  
19 barrel there is a lot of different variables on how much money  
20 we can receive from it eventually to pay back our bills to the  
21 lenders.

22 So once we put that all in, for each and every well we  
23 do have a model that we run, because it's different, and if  
24 it's economic to fix it, we will fix it or we will leave it  
25 down until that time comes to put a rig on it.

1 Q All right. Thank you. So is it your understanding that  
2 out of all of the wells on the drill site that only the  
3 Sawtelle 2 well is bottom hold outside of the federal minerals?

4 A There is one more well out there, but yes, Sawtelle 2 is  
5 out of the federal minerals, correct.

6 THE COURT: And that is Sawtelle 2; is that correct?

7 THE WITNESS: Uh-huh.

8 THE COURT: Thank you.

9 BY MR. GUADIANA:

10 Q So does Bridgeland have any partners in this drill site?

11 A Bridgeland does have partners. PCEC. They are a working  
12 interest partner in this field.

13 Q Can you explain what a working interest partner means for  
14 this Court? The difference between a working interest and a  
15 royalty interest?

16 A Sure. So for any business, just like oil and gas, a  
17 working interest partner means, you know, the business -- when  
18 you run it, there is cost to run the business. And you have  
19 ownership. And it's a business. If I own all of it or if  
20 Bridgeland owns all of it, it's 100 percent working interest,  
21 meaning anything it takes to make the field work or the cost  
22 that needs to be put in would be born by Bridgeland.

23 However, in this field here in structure, you have two  
24 different partners, working interest partners. One is  
25 Bridgeland, and the other one is PCEC.

1 THE COURT: Just a moment.

2 THE WITNESS: So between the two, it makes up  
3 100 percent working interest for --

4 THE COURT: Slowly. What was the name of the  
5 other -- the working partner. P-C --

6 THE WITNESS: PCEC. Pacific Coast Energy  
7 Corporation.

8 THE COURT: Thank you.

9 THE WITNESS: So they are, you know, 36.9, 37,  
10 around there, in that area. And then we are 62 percent. So  
11 that is the split.

12 THE COURT: Say that again. That is a percentage;  
13 is that correct?

14 THE WITNESS: Percentage.

15 THE COURT: They are about 36 to 37 percent?

16 THE WITNESS: 37 percent. Yeah, around there.

17 THE COURT: Okay. Thank you.

18 BY MR. GUADIANA:

19 Q So, Mr. Kulkarni, I'm going to show you exhibit -- what we  
20 deem Exhibit 317.

21 A Uh-huh.

22 Q Have you seen this document before?

23 A Yes.

24 Q Can you explain to me what exactly this document is?

25 A So this is a JOA or a joint operating agreement. So,

1 essentially, it's a contract, written contract between the  
2 different, you know, stakeholders on how, you know, the  
3 operations or the business would be conducted for this  
4 particular field. That's what it defines in this document.

5 Q And does this document state that -- what rights does this  
6 document give Bridgeland as opposed to PCEC?

7 A As a -- Bridgeland, you know, as an operating entity and  
8 PCEC as the nonoperating partner, so, you know, we get to  
9 operate the field on behalf of this, you know, working interest  
10 that we have.

11 So that's what this document does. And it also has  
12 different provisions in there on what we can do without  
13 consent, with consent for all of the different partners.

14 Q So this document states that Bridgeland is the operator of  
15 the oil field and that PCEC just kind of shares in the profits  
16 and losses attributable to the oil operation of the field; is  
17 that correct?

18 A That's correct.

19 Q All right. I would like you to turn to -- it's page 47.  
20 It's Exhibit A on this.

21 It's also up on the screen --

22 A Yes.

23 Q -- if that is helpful.

24 THE COURT: Just a moment. Let me find that.

25 What is the Bates number at the bottom, Counsel?



1 Because this page isn't numbered.

2 THE WITNESS: 001365.

3 THE COURT: I have it. Thank you very much.

4 Counsel.

5 BY MR. GUADIANA:

6 Q So as I understand, this notes the leases that are  
7 operated pursuant to this joint operating agreement, correct?

8 A That is correct.

9 Q And it lists a number of leases, right? It notes, under  
10 1A, 1, and 2, two federal oil and gas leases.

11 One entered into in nineteen -- it says -- it has an  
12 effective date of 1963. But I believe that that was entered  
13 into in 1956. And then another one effective as of January 1,  
14 1969.

15 And your understanding is those are the only two Bureau  
16 of Land Management leases that are operated at the field?

17 A In this field. That is right.

18 Q And then there is the Sawtelle private party leases.

19 And this notes a number of leases throughout the next  
20 pages. But it's my understanding -- or is it your  
21 understanding that this is private leases that have nothing to  
22 do with the federal government that are outside the bounds of  
23 the federal government leases, kind of adjacent to the  
24 southeast?

25 A Right. They're adjacent to the southeast. Geologically,

1 they are contiguous leases, but, yes, the way lease line and  
2 the boundaries are drawn, that is a private lease. Uh-huh.

3 Q All right. Now, I would like you to turn to page 3 of  
4 Exhibit A. This is Bates Bridgeland 001367.

5 And if you go to Number 4A. It states, The working  
6 interest percentage split between what is there known as  
7 Breitburn Fulton LLC and Pacific Coast Energy Company, LP. And  
8 it states that Bridgeland has a 62.3737 percent interest and  
9 that PCEC has a 37.6263 percent interest. Is that your  
10 understanding of the working interest split --

11 A Yes.

12 Q -- between these two?

13 A Correct.

14 Q And your understanding is that, you know, Bridgeburn [sic]  
15 obtained the rights that were noted by -- as Breitburn Fulton,  
16 LLC, under this?

17 A That is right.

18 Q So now we're going to go on to Exhibit 203.

19 I believe -- do we have it up there or --

20 THE COURT: He doesn't have it, Counsel.

21 THE WITNESS: I have Exhibit 203 on my screen.

22 BY MR. GUADIANA:

23 Q All right. So this is the item that is in issue for  
24 Bridgeland in this lawsuit.

25 Specifically, this is the amendment, revival, and

1 extension of the revocable license for nonfederal use of real  
2 property agreement.

3 And in this document, is it your understanding that this  
4 -- that through this, the VA has granted Bridgeland, or its  
5 predecessor, Breitburn, the right to slant drill a well from  
6 the Constitutional Avenue drill site into the Sawtelle private  
7 leases?

8 A Yes. That is right.

9 Q And for that right, Bridgeland pays a two and a half  
10 royalty to the Disabled American Veterans Los Angeles Chapter  
11 on total gross production of all oil, gas, and other  
12 hydrocarbons which are produced from any and all wells drilled  
13 under this license and that the DAV/LA's use of the  
14 aforementioned donated funds shall be solely for the purpose of  
15 providing transportation to veterans on and around the VA  
16 Greater Los Angeles Healthcare System campus?

17 A That is right. It's 2.5 percent given to, you know, the  
18 veterans.

19 What it is used for -- I think, you know, that was the  
20 purpose which was asked for then. But, you know, I mean,  
21 that's -- we're more than happy to give the 2.5 percent. And  
22 whatever it's used for, their right to benefit use, we're okay  
23 with it.

24 Q Do you have any idea if Breitburn was -- chose this  
25 designee or if the VA chose it, the Disabled American Veterans,

1 to receive this money?

2 A It was -- I mean, when Bridgeland acquired Breitburn, this  
3 was, you know, already there as part of the agreement. So I'm  
4 not aware before that who chose it.

5 Q But other than this agreement, Bridgeland has no  
6 relationship with the Disabled American Veterans?

7 A That's right.

8 Q And, so, Bridgeland would have no issue with the VA asking  
9 for this royalty to be paid to a different entity in the  
10 future?

11 A Yes. We would not have any issues with it.

12 Q All right. I'm going to show you now Exhibit 320. And  
13 I'd like you to flip to pages 9 and 10.

14 THE COURT: Thank you.

15 BY MR. GUADIANA:

16 Q My understanding is this is the -- what is known as a  
17 royalty deck for the Sawtelle field. And just to be clear,  
18 when you stated the Sawtelle field, you meant that to encompass  
19 both the federal BLM leases and the private leases, correct?

20 A That is right, yes.

21 Q So, I'd like to go over what this royalty deck is.

22 And, you know, I understand that Bridgeland has about a  
23 62 percent interest and PCEC has about a 37 percent, 38 percent  
24 interest of the working interest, which means they have to  
25 share in all of the expenses associated with the field.

1 But they don't get 100 percent of the income from the  
2 oil wells, correct?

3 A That is right. Yeah. We don't get 100 percent.

4 Q And who else is the royalty paid to, generally?

5 A So there is a bunch of royalty owners in this field, just  
6 like in any other oil and gas operation. And Sawtelle,  
7 specifically -- I don't have the exact number -- but the  
8 royalty owners here, between all the different leases, is  
9 somewhere between 400 to 500. And 20 percent -- 20 or  
10 21 percent off the revenue that is generated by the oil here is  
11 first allocated to all of these royalty owners. And then out  
12 of the remaining 79 percent, it's split between Bridgeland and  
13 PCEC.

14 Q So I'm going to represent that what we're looking at right  
15 now on the screen is the start of the Sawtelle 2 royalty  
16 owners.

17 And we start this spreadsheet at 628. And if you keep  
18 on turning the pages, it goes down all the way to 1,115.

19 So, I'm sure there are some duplicates in there. But,  
20 there's probably, as you noted, about 400 to 500 royalty  
21 interest owners --

22 THE COURT: Counsel --

23 MR. GUADIANA: -- associated with Sawtelle 2.

24 THE COURT: Counsel, I'm sorry. Just a moment.

25 When you refer to 628, help me. I lost you at that

1 point.

2 MR. GUADIANA: Sure. On the very left of the page,  
3 there should be the column number -- or the row number.

4 THE COURT: Just a moment.

5 MR. GUADIANA: And --

6 THE COURT: Counsel, just a minute, please.

7 Isn't that 758?

8 MR. GUADIANA: We have -- at least up on the screen,  
9 the very first column with Sawtelle 2 is 628. And it is for  
10 the owner, David Kim.

11 THE COURT: The document you gave me is 320?

12 MR. GUADIANA: Yes, Your Honor.

13 THE COURT: Okay. You look at my document. What is  
14 this page right here?

15 THE WITNESS: You're right. The document -- it  
16 starts at 758.

17 THE COURT: 758. Okay. Thank you.

18 THE WITNESS: ID. It's the ID though. 758. This  
19 starts at 506. We probably have --

20 THE COURT: 758, Counsel.

21 BY MR. GUADIANA:

22 Q So -- well, just talking this through, right. So there is  
23 a lot of royalty interest owners associated with Sawtelle 2.

24 And I would like to go through this on pages 15 and 16  
25 of this document at --

1 THE COURT: Would you give me just a moment to look  
2 at this?

3 MR. GUADIANA: Of course, Your Honor.

4 THE COURT: Why don't you have a seat for just a  
5 second.

6 So amongst the -- just on the first page, with these  
7 hundreds of names, we have --

8 MR. GUADIANA: So I see where the issues are --

9 THE COURT: Counsel, I will be with you in just a  
10 moment now.

11 Momany Meyers, City of LA, general services, without  
12 naming individuals --

13 MR. GUADIANA: Your Honor, the --

14 THE COURT: Counsel, I will be with you in just a  
15 moment.

16 I'm going to have to do this tonight, so I'm going to do  
17 it right now.

18 City of -- department of general services --

19 Have you seen this document before, for the plaintiffs?

20 MR. SILBERFELD: Yes.

21 THE COURT: Okay. And the VA's seen this document,  
22 of course?

23 MR. ROSENBERG: I believe so.

24 THE COURT: Without getting into the institutions or  
25 the names, you may not recognize some of these folks. But

1 anybody who reached the press would find a number of these  
2 individuals are household names, very prominent in Southern  
3 California, and the institutions involved as well in the  
4 investment. Counsel.

5 MR. GUADIANA: All right. So, Your Honor, just to  
6 orient you, now that I'm realizing that you do not have the  
7 column numbers -- or the row numbers on your sheet.

8 On the document Bates stamped Bridgeland 002761, starts  
9 about halfway down the page. The Sawtelle 2 royalty receivers.  
10 So the net royalty interest owners. Starts with David Kim.  
11 And then it goes all the way down to the last page, which is  
12 Bridgeland -- Bates Bridgeland 002767 and ends with Bridgeland  
13 Resources.

14 BY MR. GUADIANA:

15 Q Now, Mr. Kulkarni, I have highlighted on the screen both  
16 Pacific Coast Energy Company and Bridgeland Resources royalty  
17 amounts. This is the amount that they actually receive out  
18 of -- you know, from the payment from the oil producer who  
19 purchases the oil, correct?

20 A That is right.

21 Q And I'm going to represent that on the screen at least, I  
22 have added these two together. And you have about a  
23 79.115766 percent interest between those two partners?

24 A Correct. That is right.

25 THE COURT: Counsel, once again, I need your help.



1 Are you on 002761?

2 MR. GUADIANA: I'm now on 2767.

3 THE COURT: That's why I couldn't keep up with you.  
4 So let's turn to 002767 from 002761. Now let's look down.

5 MR. GUADIANA: At the very bottom of the page is  
6 Bridgeland Resources with a .4852002 interest.

7 THE COURT: I have that.

8 MR. GUADIANA: And about -- one, two, three, four --  
9 five lines up, you see Pacific Coast Energy Company that has a  
10 .30595746 interest.

11 THE COURT: I don't see that yet. Just a moment.

12 I have that now, Counsel. Just a minute.

13 MR. GUADIANA: And just for reference, two down from  
14 PCEC is the Disabled American Veterans, which shows the two and  
15 a half percent interest.

16 BY MR. GUADIANA:

17 Q So, Mr. Kulkarni, it's my understanding that out of the  
18 entire 75.1 percent interest, you have to pay -- the working  
19 interest owners have to pay all of the oil field operation  
20 expenses, correct?

21 A Yes. That is correct. All the 100 percent of our working  
22 interest bears all the cost to run this operation in Sawtelle  
23 2, where you get 79.11, and we have to pay all of those bills.  
24 Correct.

25 Q And the other owners, they don't share in any of those

1 costs, the other -- a little bit less than 21 percent of the  
2 royalty owners, they get theirs cost free from all of these  
3 operations?

4 A Correct. The 21 percent royalty owners in this, they have  
5 no -- they have no share in the costs.

6 So every time we sell the oil, no matter if we make  
7 money on it or not, the 21 percent goes first. And then we get  
8 our revenue to pay the bills of 100 percent costs.

9 THE COURT: You are not aware of how prominent some  
10 of these names are. You don't know these -- when we looked  
11 through these 15 or 20 pages -- and I have just glanced at  
12 them -- but you don't know how prominent some of these people  
13 are, do you, in Southern California?

14 THE WITNESS: No.

15 THE COURT: Counsel. Thank you.

16 BY MR. GUADIANA:

17 Q So let's talk about some of the operating expenses at  
18 Bridgeland. I know that you have discussed, you know, what  
19 goes into making a field -- you know, field economics and the  
20 items you consider when you consider fixing a well or leaving  
21 it idle for the time being.

22 Do you have a general idea of where the price of oil  
23 needs to be at for this oil field to be economic, to make  
24 money?

25 A Yeah. So I think, you know, the oil price needs to be

1 somewhere not off 60 to \$65. And I say that because, you know,  
2 when you do the math, 60 to \$65 oil price means we realize  
3 21 percent less than -- let's just say 60, for example. So  
4 what we realize is 48 at the end of the day because the 21  
5 percent gets cut off. So whatever the oil price is, you know,  
6 we get only 79 percent of that oil price in terms of the  
7 revenue. So, you know, the oil price needs to be quite a  
8 bit -- around 60 or \$65 for us to --

9 THE COURT: And that 79 percent isn't just  
10 Bridgeland. You have to -- you have a partner also.

11 THE WITNESS: Correct. I'm concerning that because  
12 --

13 MR. GUADIANA: That makes sense?

14 THE WITNESS: Yep.

15 BY MR. GUADIANA:

16 Q And I assume there has been new regulations that have come  
17 into California in the recent years that have made the cost of  
18 operating more expensive?

19 A That is absolutely true. Over the past ten years, you  
20 know, I have been working across the state, and over past ten  
21 years, there has been new regulations introduced, you know,  
22 rightly, for a lot of different reasons. With the reason 1137,  
23 it's probably going to add a bunch more monitoring for us,  
24 since we are so close to the freeways, and the community is to  
25 install a bunch of sensors, to understand kind of emissions,

1 all of the new regulations that keep coming in, add to the cost  
2 in terms of monitoring and managing the operations.

3 Q And I think you might have already stated this before,  
4 but, you know, when the field is up and running, you know, the  
5 250 barrels a day, about how much of that is attributable to  
6 Sawtelle 2?

7 A Sawtelle 2 is 100 to 130 barrels. It's almost 40 percent.  
8 35 to 40 percent of that production.

9 THE COURT: Just a moment. At 250 barrels, we're  
10 about 100 to 130 barrels. And we're -- I'm going to repeat  
11 back to you. We're about 35 to 40 percent. My math was a  
12 little bit off. I figured it was about 42 percent. So I'm --  
13 thank you. Okay. I will correct that.

14 BY MR. GUADIANA:

15 Q So, you know, one of the biggest issues with this case is  
16 what happens to this revocable license that I just showed you a  
17 little while ago? And if this Court invalidates that license,  
18 what happens to Bridgeland's operations?

19 We had our expert, Rob Rainbolt, up here earlier this  
20 morning. And he discussed a concept of unitization, where if  
21 this license was invalidated that there is a procedure you can  
22 go through with the Bureau of Land Management to kind of  
23 combine a federal lease with privately leases to have them kind  
24 of produced as one well -- or as one lease. And that would  
25 grant Bridgeland the rights to continue producing Sawtelle 2.

1 Now, as I understand, for that to actually happen, there  
2 have to be some field -- there has to be some geologic measures  
3 that support that because if there are two completely different  
4 reservoirs, you can't pool them into one, right?

5 A That is right.

6 Q Have you taken a look at the geology between the 1956 BLM  
7 lease and the Sawtelle leases?

8 A Yes. You know, so that's something we have looked at. As  
9 I said a little earlier is subsurface-wise, these are  
10 contiguous pools from a geology perspective. So there is no  
11 feature beneath the ground separating it. So it would make  
12 sense to unitize it because, you know, the oil well starts  
13 draining. And as it depletes, it starts draining from outer  
14 and outer. So we could unitize this with the BLM lease. That  
15 way, the minerals are being drained and, you know, combined.

16 THE COURT: On the private -- I'm going to call it  
17 leases, private leases, if the Court enacted injunctive relief  
18 on Sawtelle 2, your well, that doesn't mean you are precluded  
19 from finding an additional site outside the VA property which  
20 would still give you access; is that correct?

21 In other words, you could go out and find a private  
22 landowner or somebody else outside the VA premises and still  
23 gain access -- now, it might be expensive. I understand that.  
24 But you could still gain access to that pool, couldn't you?

25 I know there is lots of problems with private owners.

1 It's going to be the unfriendly --

2 THE WITNESS: Private owners is one thing. At this  
3 point, the state with the new regulations won't allow you to  
4 drill --

5 THE COURT: Oh, I know. I have got a parade of  
6 horrors out there. But in theory, if the Court signed  
7 injunctive relief, that necessarily -- because I'm being told  
8 we can go to BLM. That's what counsel is inferring.

9 THE WITNESS: Right.

10 THE COURT: Maybe they will sign off on it. Maybe  
11 they won't.

12 But regardless of the state, et cetera, you are not  
13 precluded from going into Sawtelle 2. It's just more  
14 expensive. And you have got some regulations. California  
15 isn't oil friendly, probably, like Texas.

16 THE WITNESS: No. Today in the City of Los Angeles,  
17 within 30 to 100 feet of any public properties or housing, park  
18 or hospital, we will not be able to drill a well, period.

19 THE COURT: Okay. Counsel.

20 BY MR. GUADIANA:

21 Q So, I would also just like to ask, do you know of any  
22 recent of City of Los Angeles or County of Los Angeles  
23 regulations that would prohibit you from drilling a well  
24 outside of the current drill site?

25 A That's what I'm saying, I think. Drilling -- any new

1 drilling activity, based on my knowledge and working with all  
2 of these new state regulations, there has not been a new  
3 drilling permit issued for the last 18 months or 24 months in  
4 the City or County of LA. And it's been pretty obvious that  
5 there will be no new drilling permits issued ever in the City  
6 and County of LA.

7 Q Right. And I believe the City of Los Angeles has also  
8 instituted an oil ban prohibiting all drilling throughout the  
9 city?

10 A Correct. And that is -- and that is, you know, just --  
11 yeah. That's another thing for us to keep working towards.  
12 And, you know, that is another cost for us to manage this field  
13 is to respond to everything new that county and city comes up  
14 with.

15 It's definitely a lot more added cost to continue to  
16 manage these operations here.

17 Q So my last question for you. Taking in the fact that it's  
18 possible for the BLM to approve Sawtelle 2 being combined with  
19 the federal lease, because it sounds like Sawtelle 2 is  
20 somewhat draining the federal minerals, and the fact that, you  
21 know, Bridgeland takes a lot of the risks in with -- you know,  
22 with what the costs are, and they are not sure if they are  
23 always going to make money. And this license granting a two  
24 and a half percent royalty for the purposes of transportation  
25 to the Disabled American Veterans, do you believe that this

1 license principally benefits veterans?

2 A Absolutely. I think so. It does benefit it. Like I  
3 said, there is no risk for all of the 21 percent, including the  
4 two and a half percent here for the veterans, irrespective of  
5 the field -- or we are making money or not, and there is a  
6 benefit that is going out to the veterans from these  
7 operations.

8 MR. GUADIANA: Your Honor, I move for Exhibits 320,  
9 317, and -- 317 to be admitted evidence.

10 THE COURT: Received.

11 (Exhibits 320 and 317 received into evidence.)

12 THE COURT: Go check with your team. I didn't ask  
13 last time. Are you satisfied?

14 All right. Then let me turn -- remember, it's not  
15 benefit the veterans. The standard will be principally benefit  
16 the veterans. Does this principally benefit the veterans?

17 It's a little bit different standard, the  
18 benefitting. It's principally benefit.

19 Does this principally benefit the veterans?

20 THE WITNESS: The two and a half percent that gets  
21 contributed to the veterans for the use of transportation or,  
22 you know, we are open for whatever the benefit the right to use  
23 of this percentage is, I think, yes. The money that is coming  
24 from this operations going to the veterans, it would benefit  
25 them. That is my understanding.



1 THE COURT: Okay. It doesn't matter. Over to the  
2 VA. Any questions on cross-examination?

3 MR. ROSENBERG: No questions, Your Honor.

4 THE COURT: HUD, any questions?

5 Back to --

6 MR. SILBERFELD: No questions.

7 THE COURT: Okay. Let me check my notes for just a  
8 moment.

9 You stated, I think, from memory, that Bridgeland,  
10 in Southern California, extracts about 1,000 to 1,200 barrels a  
11 day through all of the different interests.

12 And here you stated that -- I have got ranges. In the  
13 papers, it was 280 barrels a day. Then it was 250. And then  
14 it could be 100.

15 If I took an average in the last year on the -- I'm  
16 going to call it the VA site --

17 THE WITNESS: Uh-huh.

18 THE COURT: -- what would my extraction be per day  
19 on an average? 100 barrels? 130 barrels?

20 THE WITNESS: About 100 barrels.

21 THE COURT: About 100 barrels a day on the average.

22 Counsel, could you help me, what two and a half percent  
23 of that would be? Save me doing it tonight.

24 MR. GUADIANA: 2.5.

25 THE COURT: Give me a number. What is our royalty

1 then?

2 In other words, if we're not dealing with 280, and I'm  
3 dealing with a top figure of 125 or 160,000 or I'm leaving a  
4 low figure of 57,000, if I'm averaging 100 barrels a day, what  
5 is my royalty here in real dollars?

6 And check with other counsel.

7 MR. GUADIANA: Your Honor, would you like -- I mean,  
8 what price of oil would you like me to use.

9 THE COURT: 80. Better yet, 90.

10 MR. GUADIANA: All right.

11 THE COURT: Let's go to 90.

12 I'm going to joke with you. During the election year,  
13 it will come down for both parties. But let's take 90.

14 MR. GUADIANA: I will check this math again, but I'm  
15 getting 225 bucks a day and only 100 barrels.

16 THE COURT: What is my royalty at the end of the  
17 year? It will take me 30 minutes to do this tonight --

18 MR. GUADIANA: 82,000.

19 THE COURT: 82,000. Okay. Let's write down 82,000  
20 at two and a half percent, right?

21 MR. GUADIANA: Yes. Technically 82,125.

22 THE COURT: Now is that at \$90 a barrel?

23 MR. GUADIANA: That was at \$90 a barrel. Sorry,  
24 sorry, that was at \$80 a barrel.

25 THE COURT: Take me to \$90 a barrel.

1 MR. GUADIANA: All right. No, that was at \$90 a  
2 barrel.

3 THE COURT: 82,000, let's just...

4 Now, take me from two and a half percent to three and a  
5 half percent. Because remember, at \$80 a barrel we jumped  
6 one percentage point.

7 MR. GUADIANA: 114,975.

8 THE COURT: Okay. So that's about, give or take,  
9 10,000 or whatever, that's about our royalty per year now.

10 THE WITNESS: Sorry?

11 THE COURT: That's our royalty per year.

12 THE WITNESS: Uh-huh.

13 THE COURT: At three and a half percent.

14 Okay. Sir, I want to thank you very, very much for your  
15 attendance and your courtesy. You may step down.

16 THE WITNESS: Thank you.

17 THE COURT: Counsel, on behalf of the parties, are  
18 you resting?

19 MR. GUADIANA: Yes, we're resting, Your Honor.

20 THE COURT: Counsel on behalf of the VA, are you  
21 resting? Well, let's go to the plaintiffs first.

22 Is there any rebuttal, surrebuttal?

23 MR. SILBERFELD: I have a rebuttal witness.

24 THE COURT: I want to make sure that the other  
25 parties are resting, and if you're calling somebody back,

1 you're more than welcome to.

2 MR. ROSENBERG: We rested yesterday, Your Honor.

3 THE COURT: I want to be sure, though.

4 HUD, are you okay? VA okay? They've rested.

5 Then rebuttal.

6 MR. SILBERFELD: Yes, Your Honor, plaintiffs would  
7 call Randy Johnson.

8 THE COURT: Randy Johnson, thank you very much, sir.  
9 Mr. Johnson, we administered an oath some time ago to  
10 you.

11 Do recall that oath, sir?

12 THE WITNESS: Yes.

13 THE COURT: We're not going to readminister that. I  
14 want to invite you to join us again. I'm not so worried about  
15 the two steps, I'm most worried about the little ledge.

16 THE WITNESS: I remember.

17 THE COURT: Yes. Have a seat, sir.

18 Once again, for my record, would you state your full  
19 name?

20 THE WITNESS: Randy Scott Johnson.

21 THE COURT: And, sir, just to be certain, would you  
22 spell your last name?

23 THE WITNESS: J-O-H-N-S-O-N.

24 RANDY SCOTT JOHNSON,  
25 having been previously sworn,

1 testified as follows:

2 THE COURT: This would be rebuttal direct -- or  
3 direct examination, my apologies.

4 MR. SILBERFELD: Thank you, Your Honor.

5 FURTHER DIRECT EXAMINATION

6 BY MR. SILBERFELD:

7 Q Mr. Johnson, thank you for coming back.

8 At my request -- and you were here yesterday as well,  
9 were you not?

10 A Yes.

11 Q All day?

12 A Yes.

13 Q At my request, did you update the maps that you testified  
14 about when you were first here on your direct examination?

15 A We did.

16 Q Did you update that map to reflect some of the new  
17 information we got as recently as yesterday afternoon from  
18 Dr. Ferrer, for example?

19 A We did.

20 Q And did you update the map to reflect the Court's concerns  
21 about a 500-foot buffer next to the San Diego Freeway?

22 A Yes.

23 Q And did you also take into account in updating your map  
24 the testimony of Dr. Braverman about the use of the South  
25 Campus and the future uses having to do with construction

1 there?

2 A Yes.

3 Q And did you also take into account in updating your map  
4 the Court's concerns about the ring road on the South Campus,  
5 do you recall that?

6 A Yes.

7 MR. SILBERFELD: I provided counsel, Your Honor, a  
8 copy of what we have marked as 248.

9 THE COURT: Okay. 248. Thank you.

10 BY MR. SILBERFELD:

11 Q So, Mr. Johnson, this was something that was produced in  
12 the last 24 to 48 hours?

13 A Correct.

14 Q It's been adjusted in a number of ways even in that last  
15 48 hours, has it not?

16 A Yes.

17 Q Let's walk through it.

18 Let's begin with some landmarks.

19 You see the San Diego Freeway?

20 A Yes.

21 Q In Exhibit 248?

22 And do you see the two red lines next to the Westside of  
23 the freeway?

24 A The 500-foot buffer, yes.

25 Q Is that the buffer that the Court was concerned about?

1 A Correct.

2 Q And you put that in?

3 A Yes.

4 Q Did that have the effect of removing any of the parcels  
5 you originally testified about could be used for temporary  
6 supportive housing?

7 A It did.

8 Q So if you go down to the bottom of the map, you see where  
9 the green parcel is that's marked Number 4?

10 A Yes.

11 Q Did there used to be a parcel across the street which is  
12 the Safe Parking overnight lot, did that used to be one of your  
13 parcels?

14 A Correct.

15 Q And you removed that now for what reason, sir?

16 A It fell within the 500-foot buffer.

17 Q And therefore --

18 A Therefore it was excluded.

19 THE COURT: But it could still be used by the  
20 construction -- or as a construction yard, obviously, for the  
21 new tower at the hospital, couldn't it?

22 THE WITNESS: Correct.

23 THE COURT: It's got nothing to do with housing now?

24 THE WITNESS: Right.

25 THE COURT: Counsel?

1 BY MR. SILBERFELD:

2 Q Since the Court mentioned construction siting or laydown  
3 space, you are aware of the testimony of Dr. Braverman about  
4 this but -- and I'm just summarizing, that the South Campus is  
5 going to have a fair amount of construction activity when a new  
6 critical care tower gets built sometime in the next six years.

7 You're aware of that, are you not?

8 A Correct.

9 Q Dr. Braverman essentially testified that there isn't very  
10 much, if any, space on the South Campus to use for housing  
11 because of the need for laydown space.

12 Do you recall that testimony?

13 A Yes.

14 Q You have some experience, do you not, with building tall  
15 buildings?

16 A Yes.

17 Q And you built them in downtown Los Angeles?

18 A Yes.

19 Q And in the city of New York?

20 A Yes.

21 Q Do you have -- when you build tall buildings, whether  
22 they're 10 stories or 50 stories, do you generally have 15, 20,  
23 30 acres of laydown space available to you?

24 A Never.

25 Q How do you solve that problem?



1 A It's -- the construction -- it's just in time. You've got  
2 two issues, you have the issue with materials and then you have  
3 the issue with where are the workers going to park.

4 So, the contractor needs to figure that out, but  
5 30 acres, no.

6 Q How about 15 acres?

7 A No. I mean --

8 Q 5 acres?

9 A -- how about 2 at the most.

10 Q All right.

11 A That's being generous.

12 Q All right. So the Court sort of previewed one of my  
13 questions, which is the parking lot -- the overnight parking  
14 area that we visited that used to be an area you thought about  
15 temporary housing for, you have removed it, is that an area in  
16 your judgment that could be used as construction laydown space?

17 A Yes.

18 Q All right. So coming up from the bottom of the campus,  
19 you have -- what is marked there as Numbers 1, 2, 3, and 4,  
20 let's talk about those.

21 In your original testimony 1, 2, and 3 were a single  
22 parcel. Do you remember that?

23 A Yes.

24 Q And you've now broken it up into three parcels, correct?

25 A Correct.

1 Q And is that, in part, to maintain the ring road around the  
2 South Campus portion?

3 A Yes.

4 Q And you have separately identified now for us in the table  
5 to the left at the top, it says, "TSH parcels and area."

6 Do you see that?

7 A Yes.

8 Q So Parcel Number 1 that is in the green is an area you  
9 have measured as being 1.7 acres, correct?

10 A Our consultant measured it, yes.

11 Q That was Mr. Fain's office?

12 A That was Gensler's office.

13 Q Do you have any reason to doubt that that is reasonably  
14 accurate?

15 A I'm pretty sure it's got to be really close.

16 Q Okay. Parcel Number 2, is 3.7 acres, correct?

17 A Correct.

18 Q At the moment those are both solar fields, correct?

19 A Yes.

20 Q And then Parcel Number 3 is the larger solar parking lot  
21 we have talked about before?

22 A Correct.

23 Q If that were to be used for housing there would have to be  
24 built a parking structure of some kind somewhere on the South  
25 Campus to accommodate the spaces that were lost?

1 A Correct.

2 Q And that area, solar parking lot 3 is --

3 THE COURT: Just a moment. Why couldn't North  
4 Campus be used for parking? Because, remember, that the  
5 veterans have to get from North Campus, who are either  
6 traumatized or amputees, to South Campus. Why can't employees  
7 in this temporary period of time park on North Campus and walk  
8 over, because they are ambulatory, or use our bussing service.  
9 Why can't we use some of this parking out at North Campus?

10 THE WITNESS: You could.

11 THE COURT: Okay.

12 Counsel?

13 BY MR. SILBERFELD:

14 Q So then area Number 4 in the green there, that is the same  
15 parcel that you talked to us about when you were last here,  
16 that hasn't changed, has it?

17 A No.

18 Q Okay. And that's an area roughly 4.3 acres, it's heavily  
19 treed at the moment, but that is an area where you think  
20 temporary supportive housing could be placed.

21 A Yes.

22 THE COURT: Ask him, one of you, I don't care which  
23 side, what this -- I forgot the word, it was going to be paved,  
24 then we were going to have some kind of --

25 THE WITNESS: Catch basin.

1 THE COURT: -- catch basin. What's that all about?

2 BY MR. SILBERFELD:

3 Q Are you aware of that, that there is a future plan or  
4 phase for the South Campus, that takes the area that is  
5 Number 4 there, and makes it some sort of runoff catch basin?  
6 I'm not sure I'm using the right words, but you are aware of  
7 that, are you not?

8 A To be honest with you, Roman, no, I'm not aware of it.  
9 Remember, we haven't met with the VA once to go through what  
10 their plans are.

11 THE COURT: Well, whatever it is, we know that the  
12 VA was planning on paving this as a construction layover area  
13 and then converting this paved area to something I don't  
14 understand.

15 So I know already from both parties that this is an area  
16 that was going to be paved.

17 THE WITNESS: Was it a catch basin.

18 BY MR. SILBERFELD:

19 Q It's a catch basin.

20 A So it's for storm drain for runoff is what it sounds like.

21 Q Have you ever built on top of a catch basin?

22 A Actually, yes.

23 Q Where did you do that?

24 A That was in Boston.

25 Q Okay. Not inexpensive it's probably complicated, but it

1 can be done?

2 A Yeah, except for -- you put it down, yes. There were some  
3 rules that we had to follow, but we did.

4 Q All right. And Parcel Number 4 there, the 4.3 acres,  
5 we've talked about that.

6 Now, coming north and I want to skip over the yellow for  
7 the moment and the blue, we will come back to those in a  
8 moment. Let's go to Parcel Number 5, Parcel Number 5 is  
9 unchanged from your earlier testimony, that is a parking lot  
10 near where the tiny shelters are.

11 Do you recall that, sir?

12 A Yes.

13 Q And, in fact, in Dr. Braverman's testimony he also  
14 mentioned that as a possible site for temporary supportive  
15 housing, right?

16 A Yes.

17 Q All right. And going over to Parcel Number 6, that is a  
18 new parcel that you've identified, given the limitations that  
19 some of the changes that we have talked about here that  
20 occurred in the last few days have imposed on you, right?

21 A Yes.

22 Q So what is Parcel Number 6? And I see that it's near the  
23 UCLA baseball stadium, but what is it?

24 A Excuse me, that would be some industrial buildings, we'd  
25 have to study do we have environmental clearance to take those

1 down. More of a long shot, but we'd also have to see what is  
2 underneath that soil, if any of that stuff got into the soil.  
3 It needs work. You would need to study it. All of these need  
4 to be studied.

5 Q All right. But that Parcel Number 6 is four acres, right?

6 A Correct.

7 Q Parcel Number 7, which is again adjacent to the ball  
8 field, the UCLA stadium, is an area of about 1.9 acres.

9 Do you see that, sir?

10 A Yes.

11 Q That does not impinge on the cemetery administration's  
12 columbarium expansion space, correct?

13 A Correct.

14 Q Parcel Number 8 in the green is an area of 4.1 acres, that  
15 is the Veterans Garden, that did not change from your prior  
16 testimony, correct?

17 A Correct.

18 Q All right. Now before we go on to Parcel Number 9, the  
19 yellows and so forth, let's talk about the blue squares.

20 You are aware of Dr. Braverman's testimony here?

21 A Yes.

22 Q And have you added the three parcels that are denominated  
23 VA 6, 8, and 9 as reflecting Dr. Braverman's view, and maybe  
24 VA's view generally, that these may be areas where temporary  
25 housing could be placed, but it would have to be studied and

1 considered?

2 A Yes.

3 Q And the first one of those, which is VA 6, is on the Great  
4 Lawn, is it not?

5 A Yes.

6 Q And that's that grassy treed area north of Wilshire and  
7 east of San Vicente, right around that corner, right?

8 A Correct.

9 Q And Dr. Braverman's VA 8 is in the southeast corner  
10 entrance to the North Campus, correct?

11 A Correct. 8 falls, however, a good chunk of it, inside the  
12 500 feet.

13 Q Right. So, VA 6 is 4.2 acres, right?

14 A Yes.

15 Q And VA 8 is a total of 1.8 acres, but some of it crosses  
16 the red line.

17 A Correct.

18 Q Roughly, half or maybe a little more?

19 A Yes.

20 THE COURT: Just one moment, counsel.

21 (Pause in proceedings.)

22 THE COURT: Thank you.

23 BY MR. SILBERFELD:

24 Q So in real terms, VA 8 is probably not 1.8 acres, it might  
25 be an acre?

1 A Right.

2 Q And then Dr. Braverman also mentioned VA 9, a site roughly  
3 to the north of the Great Lawn and an area adjacent to the tiny  
4 shelters, correct?

5 A Yes.

6 Q And that's an area of about 1.2 acres, right?

7 A Yes.

8 Q Now, is another one of the updates you made for us that  
9 you added or had the architectural firm add the methane circles  
10 that were extensively discussed yet?

11 A The thousand-foot impact area, yes.

12 Q All right. And as a result of adding those three circles,  
13 Mr. Johnson, did you remove from your list of areas where  
14 temporary supportive housing could be two parcels?

15 A Yes.

16 Q And are those -- the Japanese Garden is one of them?

17 A Yes.

18 Q And the other is the Brentwood ball field that is about an  
19 acre or acre and a half that falls outside their fence but is  
20 part of their lease. Did you remove that one?

21 A Right.

22 Q Why did you do that?

23 A They were inside the thousand feet.

24 Q Okay. And you heard the testimony of Dr. Ferrer, and  
25 others yesterday --



1 A Yes.

2 Q -- that that issue around the landfill and clearances or  
3 resolution of those questions may take some time. You are  
4 aware of that?

5 A Yes.

6 Q And was that why you removed those two parcels, 9 and  
7 10 --

8 A Yes.

9 Q -- as they were originally nominated?

10 Instead, you went outside the circle and came up with a  
11 new Number 9, did you not?

12 A Yes.

13 Q And that new Number 9 is at the top of the diagram, and do  
14 you know what that is?

15 A Those are two of the ball fields that are under the  
16 Brentwood School lease.

17 Q Okay. And they are in the area above the track stadium --

18 A Yes.

19 Q -- and football field?

20 A Yeah, the third one is in inside the thousand feet, these  
21 two are outside of it.

22 Q Right. And we see that by looking at the furthest north  
23 circle and we see that Parcel Number 9 is outside the circle?

24 A Yes.

25 THE COURT: Just a moment. You have parcel Number 9

1 I think listed as 1.2 acres?

2 THE WITNESS: No, Your Honor. That's VA 9. There  
3 is multiple 9s.

4 THE COURT: Exactly. So let me go up to TSH parcels  
5 you are referring to 9 there, which is 4.8 acres. Okay. Just  
6 a moment.

7 THE WITNESS: Yes.

8 THE COURT: Okay.

9 BY MR. SILBERFELD:

10 Q So now, Mr. Johnson, let's talk about the yellow portions  
11 that you have denominated on this revised Exhibit 248.

12 Let's begin by talking about what you have designated as  
13 incremental PSH, permanent supportive housing. And you have  
14 given us five locations totaling about 21 acres of land.

15 When you say "incremental permanent supportive housing,"  
16 what are you saying to us?

17 A They haven't been previously identified or built on.  
18 These would be new.

19 Q And you had some testimony when you were here last about  
20 the demolition of certain buildings.

21 Do you recall that?

22 A Yes.

23 Q And you heard some criticism, not of you personally but of  
24 the idea, having to do with the historical designation of the  
25 campus and whether or not there would have to be approvals

1 obtained and so forth?

2 Do these five areas that you have identified here  
3 involve a demolition of anything?

4 A I don't believe so, no. Parking lots, you know.

5 Q Well, maybe parking lots, but not historic buildings?

6 A Right.

7 Q And not any demolition that would affect, in your  
8 judgment, the historical designation of the campus?

9 A Correct.

10 Q Let's go back down to the South Campus.

11 And, by the way, is the time frame for the evaluation,  
12 study, planning, and construction of this permanent supporting  
13 housing on the order of years? Five years, six years from now?

14 A As far as when you could get to it?

15 Q When you could complete it.

16 A You know, I think permanent supportive housing, you know,  
17 leave yourself a year to design and plan check, and probably  
18 it's 24 months from the moment you pull a building permit to  
19 the time you get a permanent CFO.

20 Q The nine green parcels you talked to us about that are  
21 your temporary supportive housing parcels, do you anticipate  
22 that those could be put online and in service within 12, 18  
23 months as you testified before?

24 A Yeah, you are going to have to see on -- the utility is a  
25 thing, all of your utilities, wets, dries, you need to make

1 sure, which ones -- is it already there, and you just have to  
2 put a lateral to and which ones are going to take a lot of  
3 time.

4 Q Well, let's talk about the incremental permanent  
5 supportive housing plots that you have identified for us.

6 Plot A you understand to be the Metro construction  
7 laydown yard that is next to the South Lawn area, right?

8 A Yes.

9 Q You have actually looked at that area, have you not?

10 A Yes.

11 Q Do you see much stuff lying around?

12 A No.

13 THE COURT: Show me that again, please?

14 MR. SILBERFELD: It's the yellow box A, Your Honor.

15 THE COURT: I see.

16 MR. SILBERFELD: South of Wilshire.

17 THE COURT: I have it.

18 BY MR. SILBERFELD:

19 Q You've actually taken a look, you peeked over the fence,  
20 even though it's a high fence?

21 A Yes.

22 Q That is intended to come back to VA upon the completion of  
23 the Metro stop, right?

24 A Yes.

25 Q And that is in a couple of years, correct?

1 A Yes.

2 Q And so do you think that space is suitable for permanent  
3 supportive housing when it's returned to VA?

4 A Yeah, I'm hoping that becomes part of the park system as  
5 open space, but in the event that you really needed it, you  
6 just don't have the land available, it's a potential, yes.

7 Q Parcel Number B in yellow, that is the entirety of the  
8 UCLA baseball stadium and parking lot, correct?

9 A Everything, yeah.

10 Q Why did you choose that as a place for permanent  
11 supportive housing?

12 A Because it's available.

13 Q And that is about 7.7 acres?

14 A Correct.

15 Q We will talk about how many units you can get on an acre  
16 in couple of minutes --

17 A Sure.

18 Q -- but let's keep going.

19 You see at the top of the diagram the three shapes that  
20 are denominated C, D, and E?

21 A Yes.

22 Q Now, C and D are inside the methane circles, right?

23 A Correct.

24 Q And originally you had thought about using those,  
25 Mr. Soboroff too, about using those as temporary supportive

1 housing, but that is no longer an option, is it?

2 A No.

3 Q All right. As permanent supportive housing, C and D are  
4 inside two or three of the circles where the methane problem  
5 has to be resolved.

6 And what is your assumption about when that methane  
7 problem gets resolved such that that land could be used for  
8 permanent supportive housing?

9 A We heard it yesterday. We heard the closure report could  
10 take up to five years.

11 But we're -- yeah, that needs to get worked on.

12 Q Okay. But those parcels C and D -- and we will talk about  
13 E in a second -- but C and D, which are the two city park ball  
14 fields and the SafetyPark parking lot, the southern one, those  
15 two you think could be locations for permanent supportive  
16 housing when the methane issue is cleared?

17 A Yes.

18 Q Parcel E is the north SafetyPark parking lot that directly  
19 abuts the Brentwood driveway. Are you familiar with that?

20 A Yes.

21 Q And that is outside the circle. That is outside the most  
22 northerly circle, right?

23 A Yes.

24 Q And that is an area that you think may be usable for  
25 permanent supportive housing?

1 A Yes.

2 Q All right. Now, did you prepare -- let me show you what I  
3 have marked as 249.

4 Exhibit 249 is a compilation, is it not, Mr. Johnson, of  
5 the information from the table on 248?

6 A Yes.

7 Q And it now provides not only the parcel numbers and the  
8 area by acre, but it also provides an example of the number of  
9 units that could be placed on these parcels, depending upon  
10 whether you do one story or two story?

11 A Yes.

12 Q Okay. And so the one-story column is at 25 units an acre;  
13 is that right?

14 A Correct.

15 Q And why did you use that particular figure?

16 A Because we -- because I think we can plot something that  
17 has got -- it's not jammed. You have got good landscaping,  
18 nice courtyards with that density.

19 Q And if you do a two-story temporary supportive housing  
20 unit, that is merely double?

21 A Correct.

22 Q Right?

23 THE COURT: Have you and Mr. Soboroff resolved your  
24 dispute about that?

25 THE WITNESS: Yes. We are in sync.

1 THE COURT: Is he on board now with two stories?

2 THE WITNESS: You see him saluting.

3 THE COURT: Nodding affirmatively. Good.

4 BY MR. SILBERFELD:

5 Q Now, we could go through these individually, but I think  
6 the exhibit is fairly clear. When you get down to the totals  
7 for the nine parcels, you have 36 and a half acres  
8 approximately. And if you build one-story temporary supportive  
9 housing units, your best judgment is you can get 910 units on  
10 the 36 acres?

11 A Yes. If you had -- if you had all of these sites were  
12 cleared and the utilities were there and there were no other  
13 issues, yes. The answer is yes.

14 Q All right. But your testimony earlier was that given the  
15 drop in homeless veterans to about 3,000, you thought 750  
16 temporary supportive housing units would be enough to make a  
17 robust impact on homelessness, correct?

18 A Yes.

19 Q So at 910, you have got a buffer for something going wrong  
20 with some parcel somewhere?

21 A Yes.

22 Q All right.

23 A A small buffer.

24 Q But a buffer nonetheless?

25 A Yeah.



1 Q Be optimistic.

2 And then the two-story column, at 50 units an acre, the  
3 36 acres yields 1,820 units potentially.

4 A Right.

5 Q Again, allowing for a problem, a condition, something that  
6 can't be resolved, correct?

7 A Right.

8 THE COURT: Or as a mix. You could mix this with  
9 one story in some locations if it's suitable and others with  
10 two story.

11 THE WITNESS: I mean, if we're -- the goal is to get  
12 750. And if you are building 25 DU per acre, you need to get  
13 30 acres. We don't know whether we're going to get there.

14 THE COURT: Well, the point is, though, that you  
15 also have an option of, let's say, taking one parcel at single  
16 story, and you could take another parcel at double story.

17 THE WITNESS: Right.

18 THE COURT: So you could be between that 910 and  
19 that 1,820 and create space, in a sense, as you went.

20 THE WITNESS: Sure.

21 THE COURT: Counsel.

22 BY MR. SILBERFELD:

23 Q So, we have talked about the temporary supportive housing  
24 parcels that you identified. But then below, on the same page,  
25 on Exhibit 249, we have plotted out the same information for

1 the three sites Dr. Braverman talked about in his testimony.

2 Do you see that?

3 A Yes.

4 Q And, again, without going into the details, those three  
5 parcels, if they were fully available -- and we have to  
6 acknowledge that VA 8 is probably only partially available  
7 because of the red line -- do you remember that?

8 A Yes.

9 Q But if they were fully available, those three parcels  
10 would yield an additional 180 units of one-story temporary  
11 housing, right?

12 A Yeah.

13 Q Or if it was two story, it would be 360?

14 A Yes.

15 Q So between the two, if you added up 9, 10 and 180, you  
16 would be well over 750, correct?

17 A Yes.

18 Q And, again, these are units that could be placed within 12  
19 to 18 months, hopefully?

20 A Yes.

21 Q All right.

22 Then, lastly, let me show you what has been marked as  
23 Exhibit 250.

24 Here, Mr. Johnson, did we compile essentially the same  
25 information with slightly different heights for the permanent

1 supportive housing parcels?

2 A Yes.

3 Q All right. And, again, we took the parcel information  
4 from Exhibit 248, correct?

5 A Correct.

6 Q And we brought it over and assumed a three-story permanent  
7 supportive housing building and a four-story permanent  
8 supportive housing building, correct?

9 A Correct.

10 Q And at three stories, what is your opinion as to the  
11 number of units per acre that could be built?

12 A We could comfortably do, with new construction, 60 DU per  
13 acre.

14 Q All right. Same question with respect to a four-story  
15 building?

16 A 80 dwelling units per acre.

17 Q And we have, then, all of the math -- hopefully, it's  
18 correct because I did it -- with totals at the bottom, right?

19 A Correct.

20 Q And so if you put temporary -- sorry -- if you put  
21 permanent supportive housing over time, because at least two of  
22 these parcels involve the methane zone, that I'll call it. But  
23 if you put permanent supportive housing on these five parcels,  
24 at 60 an acre, three-story buildings, that would yield 1,272  
25 permanent supportive housing units?

1 A Yes.

2 Q Pardon?

3 A Yes.

4 Q And at 80 an acre, four-story building, it would yield  
5 1,696 units, correct?

6 A Yes.

7 THE COURT: That also doesn't take into account that  
8 there may be these temporary housing sites that would then be  
9 available if some of them were excluded.

10 THE WITNESS: If your cap was 750 and you had  
11 surplus, yes.

12 THE COURT: And right now, the precedent seems to be  
13 three stories out at the site in the renovated areas.

14 THE WITNESS: And the density for -- whether it was  
15 adaptive reuse or new construction -- is between 50 and 60  
16 right now.

17 THE COURT: Is there any new construction going on  
18 in MacArthur or any other location that is four story at the  
19 present time?

20 THE WITNESS: I don't believe so -- well, I would  
21 have to verify that.

22 THE COURT: Do any counsel know from the VA, HUD, or  
23 the plaintiffs? Do we have any precedent for four story?

24 I'm just going to assume the three story at the present  
25 time. Those are the renovated units. I didn't look closely

1 enough at MacArthur. I can't recall if they were three or  
2 four. I'm assuming they are three.

3 BY MR. SILBERFELD:

4 Q So, Mr. Johnson, with respect to the temporary supportive  
5 housing units that you have in mind to be placed -- roughly 750  
6 of them, if possible, over 12 to 18 months -- do you envision,  
7 as your concept, that those units would be phased in over time?

8 A Yes.

9 Q Same question with respect to the permanent supportive  
10 housing, which will necessarily start later, but even that, is  
11 it your concept that the permanent supportive housing units you  
12 are talking about will be phased in over time?

13 A It will. The only thing I will provide is with this  
14 change in VASH funding, it could accelerate -- it could  
15 accelerate the process quite a bit.

16 MR. SILBERFELD: That's all of the questions I have.  
17 Thank you, sir.

18 THE COURT: Counsel, thank you. I will turn to  
19 cross-examination.

20 MR. SILBERFELD: Let me offer 248, 249, and 250  
21 before I forget.

22 THE COURT: Received.

23 (Exhibits 248, 249, and 250 received into evidence.)

24 MR. SILBERFELD: Thank you.

25 FURTHER CROSS-EXAMINATION

1 BY MS. PETTY:

2 Q Good afternoon, Mr. Johnson. And Agbeko Petty for the  
3 federal defendants.

4 Mr. Johnson, you just went through about three separate  
5 exhibits with opposing counsel just now, correct?

6 A Yes.

7 Q Was any of this information included within your expert  
8 report?

9 A No, because of the timing. I mean, a lot of this  
10 information is realtime.

11 I didn't know anything about the methane until  
12 yesterday, and so we have tried to provide an up-to-date type  
13 of schedule here.

14 Q Are you aware that this information was just provided to  
15 the government about 24 hours ago?

16 A Yes.

17 THE COURT: Counsel, if you need more time -- I know  
18 you are desperately trying to catch a plane on Saturday, but if  
19 you need more time, I'm happy to reconvene on Tuesday.

20 BY MS. PETTY:

21 Q Mr. Johnson, do you recall me deposing you in June 2024?

22 A Yes.

23 Q Do you recall during in that deposition I showed you what  
24 was marked as Exhibit 10, which was identified as

25 Dr. Braverman's declaration?

1 A Yes.

2 Q And do you recall that we reviewed the contents of that  
3 document during the deposition?

4 A Yes.

5 Q And do you recall me asking what your reaction was to  
6 Dr. Braverman stating that the South Campus would be  
7 unavailable due to the construction of a critical care tower in  
8 addition to other construction that was going on in the South  
9 Campus?

10 A Absolutely.

11 Q Do you recall testifying that you find that hard to  
12 believe?

13 A Yes. I -- no. To be honest -- to be clear, the issue was  
14 that he was keeping the surface parking lots without any  
15 consideration to decking those, freeing up a lot of land, but I  
16 do recall that.

17 Q So it's fair to say that at that point in time, you were  
18 aware of the construction plans for the South Campus?

19 A No. I don't think it's -- in general -- you showed me  
20 what you showed me.

21 What you didn't show me was a site plan.

22 As I sit here today, I still have no idea where they are  
23 putting the buildings in the South Campus, and, you know,  
24 what -- how they are going to park it.

25 Q So with respect to the locations that you have identified

1 on the South Campus, that does not include the information  
2 about the construction laydown plan and what's going to be  
3 happening with the South Campus?

4 A Correct.

5 MS. PETTY: No further questions, Your Honor.

6 MR. SILBERFELD: Nothing further.

7 THE COURT: Anything further?

8 Folks, is everybody satisfied?

9 Mr. Johnson, thank you very much for returning.

10 Pleasure, sir.

11 Counsel?

12 MR. SILBERFELD: Nothing further.

13 THE COURT: Any surrebuttal?

14 MR. ROSENBERG: No surrebuttal.

15 MR. GUADIANA: No, Your Honor.

16 THE COURT: Okay. In just a moment, then, let's  
17 send you to lunch, so you can prepare.

18 You guide the Court in terms of the time you need. What  
19 time would you like to reconvene for final argument?

20 MR. SILBERFELD: 12:45 is fine, Your Honor.

21 THE COURT: 12:45. Is that satisfactory?

22 MR. ROSENBERG: Works for us, Your Honor.

23 THE COURT: Now, I'll let you -- I'm placing no time  
24 limitation on you, but please, don't get me in a box at 5:30 by  
25 being the bad judge of the year and telling you you have to



1 come back on Tuesday.

2 In other words, work that out. I know you want to go  
3 home.

4 So if you put me in that position -- work that out, but  
5 I'm not putting a time limitation.

6 It's very rare that a Court is as positive as the  
7 comments I'm about to make to all of you as counsel.

8 In 41 years on the bench, I have to say that your  
9 courtesy towards this Court and your presentations are  
10 extraordinary on behalf of your respective clients.

11 And I would like the young lady here and the young lady  
12 here and the gentleman to come up and just state your names,  
13 because every day I come in, and you are here the earliest, and  
14 I just like to recognize you folks are doing the hard work  
15 supporting these attorneys.

16 So come on up here. I would like to have a record of  
17 who you are, because I greet you every morning. But I am so  
18 impressed with the support you have given, you know, on an  
19 everyday basis to your counsel.

20 So would you come over? And we will quit meeting at  
21 7 o'clock from now on when you come in to court.

22 What is your name?

23 MR. CARNEY: Matthew Carney.

24 THE COURT: It's a pleasure to have you.

25 MS. CHRISINGER: Rachel Chrisinger.

1 THE COURT: Thank you.

2 MS. FORD: Juliette Ford.

3 THE COURT: I want to thank each of you for having  
4 counsel so well prepared.

5 I have seen you working so hard every day, and I just  
6 want you to be part of this record.

7 We're in recess, Counsel, until 12:45.

8 (Lunch recess.)

9 THE COURT: We're on the record. All counsel and  
10 the parties are present. This would be closing argument on  
11 behalf of the plaintiffs.

12 MR. ROSENBAUM: Afternoon, Your Honor.

13 THE COURT: Good afternoon.

14 MR. ROSENBAUM: May it please the Court.

15 I want to begin -- I'm sure I'm speaking on behalf of  
16 all counsel to thank this Court, Ms. Hourigan, Ms. Dubon, the  
17 law clerks, for your expertise, and your patience and your  
18 courtesy.

19 It's been a privileged to be in this courtroom this past  
20 month.

21 And I also want to express my appreciation to government  
22 counsel. These cases are tough, they pull on the emotions, and  
23 it means a lot to have counsel who are civil, cooperative, and  
24 who present important arguments that bring us to our best in  
25 responding.

1           Your Honor, this is a case about what the government  
2 owes to the men and women who have served in its military.

3           It may well be the most impactful case in our nation's  
4 history about that relationship and about the legal obligations  
5 the government has to these courageous and honorable  
6 individuals.

7           Plaintiffs Jeffrey Powers, Laurieann Wright, Joseph  
8 Fields, Lavon Johnson, and Joshua Robert Petitt, should never  
9 have lost precious years of their lives because they were  
10 unhoused.

11           They should never have slept on concrete sidewalks,  
12 sheets of cardboard, or thin plastic tarps.

13           They should never have spent nights exposed to the  
14 elements in sleeping bags or donated pup tents.

15           They should never have had to share space with rats, and  
16 gophers, and other vermin.

17           And they should never have had to seek respite amongst  
18 filth, debris, and animal and human waste in the most dangerous  
19 parts of our city, nor on San Vicente Boulevard, just outside  
20 the VA's 388-acre West Los Angeles Campus.

21           Plaintiffs should never have had to go without  
22 desperately needed mental and physical healthcare at the West  
23 LA VA Medical Center.

24           That center, as Your Honor well knows, was built on land  
25 deeded 136 years ago to serve as A Soldiers' Home.

1           It was deeded to provide care as an entitlement to  
2 disabled veterans who risked their lives in service of our  
3 nation and our freedom.

4           It was deeded to create a community, a necessary  
5 concomitant to mental and physical health treatment. It was  
6 intended to serve as a safety net.

7           And for decades, as Your Honor knows, it was.

8           One of the many tragic facts that this case has brought  
9 out is that we know this can work, that the government can care  
10 for these men and women -- men and women who cared for the  
11 Government, because for a long time it did just that.

12           The government honored its duty to care for those  
13 individuals that served it. Veterans suffering the visible and  
14 invisible wounds of war healed and they found fulfillment as  
15 members of a robust community.

16           This case has been, in part, about the devastating  
17 damage that results when government shirks its duty.

18           Plaintiffs and the class they represent courageously  
19 accepted the perils and torments of war, and the sacrifices  
20 required to defend our country.

21           They did so unaware of the risk of the ravages of severe  
22 mental illness, of traumatic brain injury, of PTSD, of  
23 schizophrenia, and of addiction.

24           Rob Reynolds, upon returning from a tour of intense  
25 combat, in which he witnessed many of his friends die in

1 battle, was told by a commanding officer that whenever he  
2 thought about them, he should have a beer for them.

3 I doubt, though, that plaintiffs would have done any  
4 differently even had they known of these possibilities.

5 Your Honor saw -- Your Honor heard from these men and  
6 women up close, none complained about devoting their lives in  
7 service of their nation in their nation's time of need.

8 That mission is, in fact, what drove them to serve in  
9 the first place.

10 What plaintiffs did not sign up for, however, was a  
11 struggle for survival upon returning to civilian life.

12 For the degradation of living without shelter on the  
13 streets of Los Angeles because their government deserted them.

14 For the agony and the wretchedness of watching the  
15 remaining years of their lives tick away on Skid Row.

16 For the nightmare of seeing what was happening to them  
17 happen to other veterans.

18 For the terrifying ubiquity of violence and addiction in  
19 their day-to-day existence.

20 For the unthinkable reality that having fought for their  
21 country in far-flung locations, facing dangers most civilians  
22 could not fathom, they would have to fight again at home,  
23 against their own government just to alleviate the injuries  
24 they sustained in its service.

25 And as in the cases of Ms. Wright and Mr. Powers, to

1 palliate the brutal injuries others in the military inflicted  
2 upon them.

3 The plaintiffs showed up for duty; the plaintiffs showed  
4 up for trial; the plaintiffs showed up for the thousands of  
5 veterans for whom they are class representatives.

6 Each time they testified, each time they testified as to  
7 the government's violation of their rights, they spoke also for  
8 their brothers and sisters on the streets who sustained  
9 identical or similar outrageous at the hands of their  
10 government.

11 That plaintiffs are alive today is a testament to their  
12 resilience, and to the power of their community.

13 They are, as Dr. Sherin might say, each other's battle  
14 buddies.

15 They are a greatest generation, too.

16 Now it is up to us, it is on our watch, to apply the law  
17 to make things as right as they can be.

18 This trial has proven definitively and exhaustively  
19 devastating facts that have or should have been clear for years  
20 now.

21 With Your Honor's permission, I want to make nine points  
22 before I turn to remedy.

23 First, by virtue of the 1888 Deed and Congress'  
24 subsequent acceptance of its terms, the government owes a  
25 fiduciary duty to veterans disabled in service of their

1 country, a duty that for the last eight years and counting, it  
2 has astonishingly disavowed.

3 Then VA Secretary Robert McDonough wrote in the preface  
4 to the 2016 draft master plan the following admission:

5 Quoting: This land was deeded for the benefit of  
6 veterans in 1888 to serve as a home for our nation's heros.

7 This plan brings us one step closer to getting the land  
8 back to its intended purpose as an inviting, welcoming  
9 community for veterans and their families.

10 The draft master plan expressly articulated the  
11 government's goal, quoting: Of revitalizing the site to its  
12 intended purpose as a home, a vibrant community that includes  
13 the development of high-quality housing tailored to priority  
14 veterans of populations with robust supports that promote well  
15 being and holistic strength-based services to augment the  
16 existing structure of healthcare services.

17 The government offered no response to these admissions.  
18 They have none. There is none.

19 The Court has now twice held that the fiduciary duty  
20 exists, leaving for this trial the determination of the nature  
21 and extent of the government's breach.

22 Second, the government has betrayed and the government  
23 continues to betray its fiduciary duty to disabled veterans by  
24 failing to timely construct adequate homes on the land such  
25 that veterans may heal and gain access to a world-class medical

1 center that exists there.

2 The 388-acre parcel intended to provide homes and  
3 communities has for decades lacked both.

4 Today any permanent supportive housing on that campus is  
5 nearly fully occupied, and there are no community structures  
6 whatsoever.

7 The domiciliary, the lifesaving facility for  
8 Mr. Reynolds and Mr. Petitt and Ms. Wright and so many others  
9 regularly has vacant beds because the VA has failed to bring in  
10 sufficient staff.

11 The limited and insufficient permanent supportive  
12 housing now in existence, though none as late as 2021, was  
13 built only after veterans took the VA to court in 2011.

14 Your Honor and I, in the very first hearing in this  
15 case, discussed that matter.

16 That suit ended in a nonenforceable settlement which the  
17 government has flouted, necessitating this case.

18 That is an error that must not be repeated.

19 Among the most egregious examples of the VA's desertion  
20 of its veterans is the 18 months from April 2020 to November  
21 of 2021, during which time the VA turned a blind eye to  
22 hundreds, hundreds of unhoused veterans languishing just  
23 outside its gates.

24 What resulted is indefensible by any criteria.

25 The VA refused even to let these injured men and women



1 -- Your Honor saw these men and women, you know what they have  
2 been through -- the VA refused to let these men and women sleep  
3 on the land deeded for their care.

4 It refused to make available even basic necessities,  
5 such as trash receptacles, food, or bathroom facilities.

6 Vulnerable veterans slept on the sidewalks just outside  
7 the campus exposed to the elements, exposed to violence, and  
8 exposed to vermin.

9 Police seized and destroyed their precious possessions,  
10 as plaintiff Lavon Johnson testified, "They just threw all of  
11 my stuff in the trash."

12 While the VA looked away, plaintiffs sought and received  
13 donations of tents and food from compassionate strangers.

14 Only after veterans died on the street and the media  
15 focused its intention on Veterans Row, did the VA even let  
16 these men and women inside the gates -- inside the gates to  
17 their property.

18 Veteran amputees, veterans in wheelchairs, veterans with  
19 broken backs, veterans in constant pain, and veterans suffering  
20 from severe mental illness, traumatic brain injury, PTSD,  
21 schizophrenia, and addiction even then were forced to crawl  
22 into pup-sized tents because VA officials would permit nothing  
23 larger, notwithstanding an offered donation of adult-sized  
24 tents.

25 As plaintiffs testified, the tents were, quote: Not big

1 enough to stand up in and proud veterans had to, quote: Crawl  
2 into a ball to get into their sleeping bags.

3 Callously, the VA refused to allow the veterans to pitch  
4 their pup-sized tents on VA lawns.

5 The donated tents were relegated to an unmaintained  
6 parking lot infested by rats and gophers. In the summers, as  
7 plaintiffs testified, the black asphalt was, quote: Really  
8 hot. When it was windy, the tents blew over.

9 Mr. Powers testified to finding a gopher inside its  
10 make-shift bedding and rats eating through his tent.

11 Needless to say, these conditions exacerbated their  
12 disabilities. Putting aside even the mental anguish,  
13 Mr. Power's knees injuries, were worsen from crawling in and  
14 out of his pup tent and Joseph Fields was repeatedly  
15 hospitalized with infection.

16 Things were so bad that it caused some veterans, like  
17 Mr. Powers and Mr. Fields, to return to the streets in search  
18 of better conditions and community.

19 The tiny sheds, the tiny sheds appeared only in the last  
20 months of 2021 and then by donation.

21 Although, of course, superior to pup tents, these sheds  
22 lacked even the basic necessity for human habitation,  
23 bathrooms, kitchens.

24 Mr. Fields likened living in the sheds to living in a  
25 medical cell in a county jail.

1 Ms. Wright described how being placed inside a metal box  
2 exacerbated her chronic pain. In the absence of sufficient  
3 fire hydrants, fires destroyed several sheds, and the bare  
4 possessions of their veteran occupants.

5 Third, the government has further betrayed its fiduciary  
6 duty by consistently subordinating the needs of disabled  
7 veterans to the service of outside interests, including a  
8 collegiate baseball program, prep school athletic facilities,  
9 surface parking, and oil drilling.

10 As the evidence has definitively demonstrated, the VA's  
11 land use agreements with Brentwood School, UCLA, SafetyPark,  
12 and Bridgeland are glaringly flagrantly unlawful under the West  
13 LA VA Leasing Act of 2016.

14 These are not even close cases, Your Honor.

15 Strikingly, Dr. Braverman admitted that the VA had no  
16 written criteria, no written criteria that it used to evaluate  
17 whether its land use agreements, quote: Principally benefited  
18 veterans and their families as required by the act.

19 That determination was, as Dr. Braverman testified, made  
20 in the, quote: Eye of the beholder, here by a VA committee, in  
21 a nonpublic meeting with no veteran input. No purported  
22 justifications were ever even written down.

23 The private Brentwood School developed its 22 acres of  
24 veteran land, acquired at no cost, into a state of the art  
25 athletic complex predominantly used by its students.

1           When the VA and Brentwood entered this lease in 2016, no  
2 one even examined whether the land was amenable to housing  
3 veterans; we now know that it is.

4           Brentwood touts its impressive facilities to perspective  
5 students and their families. On the West LA Grounds, Brentwood  
6 students swim and play water polo in the Caruso Aquatic  
7 Facility. They fence and play volleyball and basketball in the  
8 pavilion. They play football, baseball, soccer, lacrosse, and  
9 tennis and they participate in track and field, all on  
10 veterans' land.

11           In the summer, Brentwood monetizes the facilities by  
12 offering swimming and tennis camps.

13           The school apportioned the use of the facilities to  
14 allow only student access during school and after school hours  
15 conducive to student games and student practices.

16           It restricted veteran access to the early morning hours  
17 and to the evening hours, none on weekends.

18           It ran no shuttle before 9 or after 2:15 or on weekends.

19           Unsurprisingly, neither Brentwood, nor the VA made any  
20 attempt to track the actual usage of individual facilities by  
21 either students or veterans. They knew exactly what it would  
22 show.

23           Nonetheless, Brentwood treated maintenance of its  
24 facilities as an in-kind consideration, attributing a  
25 significant share of those costs to veterans with no basis in

1 actual use. Veterans, in effect, pay for the upkeep of their  
2 land for the use of Brentwood students.

3 The VA's own witness, Mr. Kuhn, testified that he would  
4 not defend such consideration.

5 Brentwood's lease also significantly undervalues the  
6 land itself given the absence of any alternative space for  
7 housing these facilities.

8 Predictably, the OIG has twice found the Brentwood  
9 School lease in violation of the West LA Leasing Act.  
10 Brentwood's response? Expend \$1 million for a major law firm  
11 to lobby Congress to allow for renewal of its lease  
12 notwithstanding OIG's finding of illegality, Brentwood got it.

13 UCLA's 30(b)(6) witness testified bravely and candidly  
14 and expressly to a fact that has been playing for years. The  
15 predominant focus of the Regents of the UCLA's activities on  
16 the VA grounds is the 10-acre UCLA Jackie Robinson Baseball  
17 Complex.

18 UCLA's baseball team uses that state of the art field  
19 and the accompanying facilities to compete with other college  
20 teams in 26 home games and regional games and super regional  
21 tournament games.

22 These games produce revenue for the school. They  
23 generate donations.

24 As, for example, the multi-million dollar practice  
25 infield. In exchange, the school counts as in-kind

1 consideration tickets for otherwise empty seats, Cokes and hot  
2 dogs, give away junk like refrigerator magnets.

3 In the summer, UCLA operates camps on the property for  
4 which it retains all of the proceeds.

5 As with Brentwood, when negotiating this lease the VA  
6 and UCLA never considered the fact that the land on which the  
7 complex is built could be used to house disabled veterans.

8 And as with Brentwood, the OIG found that the lease  
9 negotiations undervalue the lease here by \$1.1 million.

10 A fact that does not even take into account the lack of  
11 alternative sites for UCLA baseball program.

12 Annual increases ostensibly to account for inflation  
13 were set at the ludicrously low rate of 1 percent a year.

14 Once more, as you UCLA's 30(b)(6) witness acknowledged,  
15 someone did a good job of negotiating for UCLA's interest.

16 Although, Your Honor, plaintiffs did not specifically  
17 name UCLA in their complaint, we now seek to amend the  
18 complaint to conform to the extensive proof elicited at trial  
19 about the illegality of the UCLA lease.

20 At the same time that it was denying veterans the right  
21 to pitch adult-sized tents on its land, the VA was off amending  
22 its lease with UCLA to allow the baseball program to construct  
23 a state of the art practice infield to satisfy the desires of  
24 its baseball coach.

25 UCLA and the VA acted quietly, they acted collusively

1 including the Chancellor's office, seeking to muffle veteran  
2 voices, and stifle protest from what it considered that, quote:  
3 Testy unhoused veterans encamped outside the VA.

4           UCLA, for its part, refused to make the parking lot  
5 adjacent to that infield in the midst of the pandemic available  
6 for emergency housing, countering that sheltering unhoused  
7 veterans would, after all, interfere with the UCLA home game  
8 schedule, and the VA acquiesced.

9           As for SafetyPark and Bridgeland, the OIG got it exactly  
10 right.

11           The parking lot was unabashedly for the benefit of  
12 Brentwood merchants.

13           The oil drilling is, well, oil drilling.

14           Fourth, as the government itself admitted during the  
15 course of this trial, housing proximate to a medical center is  
16 a reasonable and often essential accommodation for disabled  
17 veterans needing to access care.

18           As Mr. Dennis, HUD's 30(b)(6) witness explained, HUD now  
19 allows public housing agencies to grant higher exception  
20 payment standard for such housing, because, and I'm quoting:  
21 Needing to live close to a medical facility is a reasonable  
22 accommodation for a person with disabilities.

23           Far from excusing the government's inaction, the  
24 ostensible barriers that the government witnesses testified to  
25 over and over again, a tight rental market, recalcitrant

1 landlords, that makes it all the more urgent that the 388 acres  
2 now wasted be restored to their intended purpose.

3 Fifth, pursuant to its fiduciary duty and its required  
4 by Section 504 of the Rehabilitation Act, the government must  
5 -- the government must provide permanent supportive housing  
6 sufficient to afford disabled veterans meaningful access to the  
7 mental and physical healthcare to which they are entitled.

8 The government does not, it cannot contest that  
9 permanent supportive housing is necessary to facilitate access  
10 to care for disabled veterans, and the evidence was  
11 overwhelming.

12 As Dr. Henwood testified, quoting: It's very  
13 challenging to access healthcare when you don't have a stable  
14 place to live.

15 Primarily, you are expected to go to health clinics.

16 A lot of the people experiencing homelessness will end  
17 up utilizing the emergency room for routine healthcare.

18 And they can eventually be hospitalized because of that,  
19 but typically they end up back on the streets.

20 The solution is clear.

21 As Dr. Henwood testified, permanent supportive housing  
22 is highly effective in addressing homelessness, it's one of our  
23 only evidence-based practices that really ends homelessness for  
24 people who have experienced chronic homelessness or long-term  
25 homelessness.



1 In the words of Mr. Kuhn, quoting: Housing is  
2 healthcare, the first job of the VA is to get veterans off the  
3 streets. We want veterans to be able to, with a minimum  
4 possible number of barriers, come into our program and be  
5 engaged in services and, of course, have the safety of being in  
6 temporary housing.

7 Quoting still: We know from the literature about  
8 Housing First that getting somebody into a safe environment  
9 makes it possible to do all of the other things that are  
10 important to that veteran.

11 Still quoting: Housing First says let's attend to the  
12 basic needs, free up that person's capacity so they can attend  
13 to those high order of needs and ultimately Housing First is  
14 evidence-based. It has been borne out by the data.

15 As Dr. Sherin testified: Housing is definitely a  
16 healthcare issue.

17 First of all and most fundamentally, quoting from  
18 Dr. Sherin: It's very difficult to provide care properly to an  
19 individual who is in an environment such as an encampment or,  
20 frankly, even a shelter.

21 So having a stable environment where someone can rest  
22 and engage properly or can get to a clinic and return is  
23 fundamental to health across the different fields of evidence.

24 Still Dr. Sherin: It's a health issue because not  
25 having housing is essentially bathing in a toxic environment;

1 someone with diabetes, you don't feed them sugar all day long.  
2 Someone with mental illness or an addiction, you don't leave  
3 them in the street.

4 The precept that housing is health and health is housing  
5 is, in fact, as Your Honor knows, the bedrock of the VA's  
6 Housing First policy and program.

7 Housing is in the VA's own words, a basic human right,  
8 one reiterated throughout both the draft master plan and the  
9 2022 master plan.

10 In fact, in the words of the 2022 master plan, and I'm  
11 quoting: By citing the supportive housing community within the  
12 larger West LA Campus, the VA embraces the concept of housing  
13 as health.

14 Housing is widely recognized as a key social determinate  
15 of health. By co-locating housing with a myriad of healthcare  
16 resources, from mental health to physical health, the master  
17 plan continues the supportive housing community of the West LA  
18 Campus offers an unparalleled opportunity to implement the  
19 housing as health model and promote the wellness and resiliency  
20 of our veteran residents.

21 All of the VA witnesses said the same thing.

22 Likening the condition of being unhoused to a denial of  
23 preventative care, Dr. Harris characterized housing as part of  
24 the healthcare program.

25 Dr. Braverman agreed, recognizing the benefit to

1 veterans of being on the campus so that they can have immediate  
2 access to care.

3 Sixth, the Government has failed for decades to provide  
4 sufficient permanent supportive housing to allow such access,  
5 nor has it provided urgently needed temporary supportive  
6 housing to bridge the gap between emergency short-term housing  
7 and permanent supportive housing.

8 13 years -- 13 years after the filing of *Valentini*, nine  
9 years after the *Valentini* settlement, six years after the draft  
10 master plan, and two years after the scaled-down master plan,  
11 there are but 233 units of permanent supportive housing on the  
12 property.

13 Since 2016 the government has overseen the building of  
14 on average a mere 22 units per year. That is glacial pace at  
15 best.

16 Exhibit 54. Your Honor has seen Exhibit 54, that is the  
17 proposed timeline for the development of permanent supportive  
18 housing on the property, twice set out in the master plan, the  
19 draft master plan.

20 As Dr. Braverman testified, not a single benchmark has  
21 been met, not one.

22 Existing permanent supportive housing units on the  
23 ground are, as Mr. Kuhn testified, filled virtually to  
24 capacity. Veterans are on a waiting list, making clear as all  
25 of the plaintiffs and Mr. Strain testified, that unhoused

1 veterans want to live in community with other veterans on the  
2 grounds.

3 As Mr. Kuhn helped chart in his examination by my  
4 colleague, as he helped chart during his testimony, there is  
5 also a shortage of off-campus permanent supportive housing  
6 proximate to the West LA VA.

7 I asked Dr. Harris, if he knew about housing in  
8 Brentwood or Westwood, and he said there was little to none.

9 And in the entire West LA catchment area, five counties,  
10 there are only 379 available project-based units.

11 The VA's assertion that it lacks authority to construct  
12 or even directly finance permanent supportive housing has no  
13 basis and the VA's telling the West Los Angeles Leasing Act is  
14 the sole and exclusive authority for the construction of such  
15 housing, because, as Mr. Simms testified, that's what their  
16 counsel says.

17 But, Your Honor, the act doesn't say that. Nowhere does  
18 it say that. Nowhere does the statute say that Enhanced-Use  
19 Leases must or shall be utilized to construct permanent  
20 supportive housing. It says "may" over and over and over  
21 again.

22 As Mr. Simms then acknowledged, there is simply no  
23 statement in that statute that permanent supportive housing can  
24 be built only through Enhanced-Use Leases, so too with its  
25 statutory predecessor, 38 USC 8162.

1           What does that mean? The years-long delays in getting  
2 construction underway at the grounds are the direct and  
3 proximate result of the government's outsourcing. The  
4 government's outsourcing of its responsibilities to private  
5 real estate developers.

6           Your Honor knows the story.

7           These developers must obtain their own financing, in an  
8 intensely competitive market, most often through tax credits  
9 whose illegal and unjustifiable income restrictions exclude  
10 from permanent supportive housing the veterans most disabled  
11 from their service.

12           They must then arrange for additional financing and they  
13 must then arrange for construction itself, hiring contractors  
14 and buildings.

15           As the evidence has overwhelmingly demonstrated, this  
16 cumbersome, inefficient, and discriminatory process has been  
17 and it remains unnecessary to placing permanent supportive  
18 housing on the West LA VA grounds.

19           It relies upon a method of finance, replete with  
20 restrictions, strings attached, that operate to exclude  
21 unhoused veterans with disabilities.

22           Instead of, for example, commercial lending, as  
23 Mr. Simms conceded and Mr. Johnson confirmed today, which is  
24 both viable and less restrictive. In choosing to proceed  
25 through this form of outsourcing, the government has literally

1 left veterans on the streets.

2 As Dr. Braverman testified, by contrast, he and his  
3 neighbors live on the West LA VA grounds precisely for the  
4 proximity to the medical center and their housing was  
5 constructed and financed by the VA.

6 Strikingly, government witnesses unanimously agreed that  
7 the VA does have authority to construct and does construct  
8 medical facilities.

9 Your Honor will recall testimony of Mr. Simms.  
10 According to the agency's own handbook, the VA Medical Center  
11 provides what? Residential care, and addresses such needs as  
12 medical, psychiatric, substance abuse disorder, homelessness,  
13 vocational, educational, or social services.

14 Government witnesses also admitted that the VA, pursuant  
15 its healthcare mandate, provide services relating to  
16 homelessness, particularly services for unhoused veterans with  
17 serious illness or traumatic brain injury.

18 Permanent supportive housing is a form of residential  
19 care to redress homelessness, as well as other related health  
20 concerns.

21 Again, in the words of Mr. Kuhn: Housing is healthcare.

22 Indeed, the VA builds every sort of housing. Medical  
23 care centers, community living centers, housing for the  
24 elderly, housing for drug addiction, housing in every  
25 conceivable way, except for one, housing for the homeless.

1           Why? How can that be?

2           The government has also stalled any efforts to design  
3 and construct buildings to serve as the structural foundation  
4 for a community of veterans and those who support them, what  
5 Dr. Sherin called the connective tissue required for healing  
6 and thriving and ultimately reintegration.

7           Dr. Harris, when I asked him whether he agreed with  
8 anything that Dr. Sherin said, specifically pointed to  
9 Dr. Sherin's testimony about connective tissue.

10           Recognizing the integral role of community in fostering  
11 veteran health, in fostering veteran well-being, the 2016  
12 master plan envisioned a vibrant town center serving as the  
13 downtown, and I'm quoting: The downtown of the campus enabling  
14 veterans to build relationships, participate in events in a  
15 public square, attend outdoor concerts, coordinate a volunteer  
16 effort, and develop employment opportunities, visit a library,  
17 or grab a bike to ride all around the property.

18           Let's be straight about this, the government has, for  
19 all intents and purposes, abandoned this vision.

20           Your Honor walked around that entire campus. Did Your  
21 Honor see one piece of community structure that would be part  
22 of the community that was envisioned?

23           As Dr. Braverman testified, not a single community  
24 structure has been planned, let alone constructed.

25           It's all in the so-called concept phase.

1 Existing structures that could serve as community hubs,  
2 such as the chapel.

3 Dr. Sherin envisioned a chapel as a, quote: Beacon of  
4 hope for the veteran community and it has been left by the VA  
5 to decay and to deteriorate.

6 That dilapidated chapel is a stark embodiment of the  
7 VA's dereliction of its fiduciary duty and its failure to  
8 sustain, its failure to care about the thriving community that  
9 once existed on this land.

10 If the VA really cared about the historic nature of the  
11 campus, which we heard over and over again, how could that  
12 chapel be in the state that it is in?

13 The HUD-VASH program, as it operates in Los Angeles, is  
14 a deeply broken system. It is riddled with problems  
15 attributable to the VA that defeat the purpose of placing  
16 unhoused veterans with disabilities in safe and supportive  
17 housing.

18 Far too many of the vouchers go unused, particularly as  
19 the tenant-based housing.

20 The usage rate for the two largest public housing  
21 agencies in Los Angeles is well below 70 percent, the rate  
22 required by HUD for issuance of more vouchers.

23 As the testimony of Mr. VanNatter and Mr. Kuhn  
24 demonstrates, this is a consequence of a shortage of VA case  
25 managers and the VA's historically low referral rates, as low



1 as four a week in 2023.

2 And although the government touts its recent  
3 improvements, its current rate of referrals is less than a  
4 third of what HACL A requires to catch up with, quote: Such a  
5 large number of unused vouchers.

6 Also deeply troubling is the fact in 2022 and 2023, more  
7 veterans left the program than were referred to it.

8 While, of course, the rate of exits due to so-called  
9 program violations have improved over the past year, as  
10 Dr. Harris put it, quote: It's still higher than what we want  
11 it to be.

12 The locations of project-based housing as distant as  
13 Templeton, 203 miles; Pomona, 46 miles; Harbor City, 25 miles;  
14 and Lancaster, 65 miles, not 201 as one lawyer stated, and  
15 along the 110 Corridor are incompatible with affording  
16 reasonable access to healthcare for veterans with serious  
17 mental illness, traumatic brain injury, PTSD, and  
18 schizophrenia.

19 For the straightforward reason, as Your Honor pointed  
20 out, there are no specialty care facilities, no tertiary  
21 facilities in these locations.

22 Getting to the West LA VA Medical Center from such  
23 locations is a trek. It can take hours. And most veterans  
24 lack transportation in the first place.

25 Presumably to cut costs, the VA discontinued the

1 successful Ride Share program it operated during the pandemic  
2 for just this purpose.

3           Moreover, these units, they're not cited in communities  
4 with significant number of veterans. When we asked that  
5 question, no one even knew if there was veterans in the  
6 communities where these individuals were placed.

7           What did that result in? Isolation, despair. Put  
8 simply, what the government has done is to place some veterans  
9 in housing that by distance and environs creates a set of  
10 problems that all too often exacerbate the existing health  
11 conditions they suffer.

12           Dr. Braverman and Dr. Harris acknowledge these facts.

13           As Mr. Johnson testified, when left in an apartment in  
14 south LA where he lacked community, with very little support,  
15 his paranoia and his suicidal ideations worsened, and he took a  
16 bunch of pills that he received from the VA at the same time.

17           Eventually, he just gave up and went back to the  
18 streets.

19           Ms. Wright, stranded in Lancaster, unable to see a  
20 specialist for her worsening arthritis and for her back and her  
21 neck pain that leaves her unable to even walk to the bathroom  
22 without having to bend over.

23           She testified about her loneliness, she testified about  
24 her depression from living in Lancaster, isolated from her  
25 veteran community.

1 Dr. Harris wondered why Ms. Wright was in Lancaster, and  
2 then he testified that the test to transfer to housing, say, on  
3 the VA grounds where Ms. Wright desperately wanted to go to  
4 live among other veterans, that she would have to first become  
5 homeless under existing law.

6 He testified that for years -- and he is one fierce  
7 advocate -- he testified that for years he has unsuccessfully  
8 sought to change this absurdity. That rule is unlawful, it is  
9 irrational, and it is fundamentally inhumane.

10 And what Mr. Johnson and Ms. Wright testified to was on  
11 behalf of others who shared similar experiences.

12 Look, the housing in these project-based units far from  
13 the medical center, far from the community, isolation, they are  
14 not model homes for a Housing First brochure or for a video  
15 extolling their virtues.

16 Moreover, as Dr. Harris testified, 70 percent -- 70  
17 percent of project-based permanent supportive housing units  
18 built on and off the West LA VA grounds have 30 percent AMI  
19 limits. I know Your Honor knows this well, which, because of  
20 veteran disability compensation being counted as income,  
21 different from the IRS, because of that it renders ineligible  
22 those veterans most disabled by their service outsourcing  
23 discrimination.

24 And both HUD and VA witnesses acknowledge that HUD's  
25 recent policy change, which, let's been frank about it, HUD

1 adopted only after this Court's summary judgment ruling,  
2 employing a waiver authority that it had just months ago  
3 refused to exercise will have no impact on these restrictions.

4 Dr. Harris testified that every VA official he,  
5 Secretary McDonough, Dr. Braverman, Mr. Kuhn, believes that  
6 counting disability compensation as income for purposes of  
7 housing eligibility is unfair and should be eliminated.

8 As Mr. Kuhn testified, this is a matter of justice, it  
9 has been a matter of justice for far too long.

10 HUD and VA witnesses, both acknowledged that Treasury  
11 has not to date made any changes, has not issued the guidance  
12 to address that issue, nor have state and local tax credit  
13 programs.

14 In other words, for severely disabled veterans whose  
15 disability compensation locks them out of permanent supportive  
16 housing, nothing has changed.

17 Seventh, these failures result at least, in part, from  
18 the VA's refusal to dedicate adequate resources, financial,  
19 personnel, and otherwise, to addressing veteran homelessness in  
20 Los Angeles.

21 As a threshold matter, the VA does not seek out and  
22 identify unhoused veterans to connect them with services such  
23 as permanent supportive housing, not in any real way.

24 As Shad Meshad testified, unlike the VA, the National  
25 Veterans Foundation every week combs the streets of Los Angeles

1 County in a van to find and assist unhoused veterans.

2 Not only does the VA not have any effective outreach  
3 system, it incredibly has no intention of creating one.

4 As Mr. Kuhn testified, quote: The VA will never have  
5 enough outreach staff. Same with Dr. Braverman, who testified  
6 that he was concerned from the moment that he assumed  
7 leadership at the West LA VA Medical Center that he was  
8 concerned about the VA shortage of outreach workers.

9 Your Honor will recall my discussion with Dr. Harris  
10 when we looked at the VA organizational chart.

11 The numbers of outreach staff to cover the medical  
12 centers' five county catchment area of Los Angeles, Ventura,  
13 Kern, Santa Barbara, and San Luis Obispo is shockingly low.

14 As Dr. Harris testified, going through that  
15 organizational chart, the entire VA street outreach staff for  
16 this Greater Los Angeles catchment area covering 20,000 square  
17 miles, an area larger than Costa Rica, consists of but 13  
18 workers.

19 Not all of them actually go out on the street. Only  
20 four of whom are social workers and perhaps as few as six or  
21 less are veteran peers.

22 The One Team approach that was extolled to Your Honor is  
23 but another example of the VA outsourcing its core duties to  
24 external agencies.

25 It is no substitute for VA spearheading the aggressive

1 large-scale outreach con -- that should be conducted by veteran  
2 peers.

3 Outreach needed to find and identify the most vulnerable  
4 unhoused veterans.

5 Unlike Rob Reynolds and his combat unit who searched  
6 relentlessly for their three kidnapped brothers in Iraq, the  
7 ethos of leaving no veteran behind is not that of the West LA  
8 VA Medical Center.

9 Does the VA really not know where LA's unhoused disabled  
10 veterans are?

11 If this courtroom had windows, they would see.

12 Nor does the VA have sufficient staff to deliver  
13 supportive services to the veterans it does reach.

14 The recently released OIG report on severe staffing  
15 shortages, that is Exhibit 220, found that in Los Angeles the  
16 position of psychologists had the most clinical vacancies,  
17 followed by social workers.

18 Psychiatrists were also in the top six. The HUD-VASH  
19 program has had staffing shortages for years as high as 30 to  
20 40 percent.

21 In recent years, and even now, the VA takes pride in the  
22 fact that one in eight of its HUD-VASH position remains  
23 unfilled.

24 Rather than dedicate sufficient resources to staffing,  
25 the VA attempts, again, to outsource its outreach, outsource

1 its referrals, outsource its case management, outsource its  
2 social work, and so on.

3 For example, by asking already overburdened public  
4 housing agencies to volunteer to act as caseworkers.

5 With the unsurprising result, that the provision of  
6 services is fragmented, is haphazard, and it is nearly  
7 impossible for a disabled veteran to navigate.

8 To date, not a single public housing agency in Los  
9 Angeles, Mr. VanNatter testified, has signed on to the VA's  
10 effort to pass the buck when it comes to case management.

11 And these shortages, Your Honor, these shortages are  
12 compounded by the fact that the VA outsources the case  
13 management at Buildings 209, 205, 208, and 207 on its grounds,  
14 as well as its project-based units within the community to  
15 outside entities like Step Up on Second, or PATH, or VOA.

16 Dr. Harris testified, so did Dr. Braverman, that these  
17 entities have had constant staffing issues, including  
18 insufficient numbers of social workers.

19 If VA officials genuinely believed that financial  
20 constraints prevented them from providing adequate permanent  
21 supportive housing, if they were having trouble making ends  
22 meet on an annual 407 billion dollars in resources, if they  
23 felt that it was keeping them from providing adequate permanent  
24 supportive housing, obtaining temporary supportive housing, or  
25 properly executing its outreach in case management services,

1 well, then they could have gone to Congress.

2 But the testimony is they did not. They have not. They  
3 do not intend to do so.

4 Dr. Braverman testified that there had been no  
5 discussions internally or with the Secretary about seeking  
6 additional resources from Congress.

7 Dr. Harris, who often works with Congress on veteran  
8 matters, who speaks frequently with the Secretary, he testified  
9 that he travels with the Secretary, has likewise, he testified  
10 never broached the need for more funds from Congress.

11 Whatever else may be said of Brentwood School, when the  
12 OIG in 2018, found its lease with the VA illegal, it  
13 immediately retained a major law firm to lobby Congress to  
14 change the law, such that it could retain its lease.

15 The VA has taken no such action.

16 Eighth, the government's failure to provide permanent  
17 supportive housing or temporary supportive housing has had, and  
18 it continues to have, devastating consequences for the health,  
19 mental and physical, of disabled veterans rendering the need  
20 for housing extremely urgent.

21 As Mr. Kuhn testified, the most dangerous place for a  
22 veteran is on the street. There is significant mortality and  
23 morbidity risk to veterans on the street.

24 The VA did not even attempt to dispute that life on the  
25 street worsens severe mental illness by the minute, worsens



1 traumatic brain injury, worsens PTSD and schizophrenia, that it  
2 magnifies the risks and dangers of addiction and that it  
3 creates life-threatening stress.

4 As Dr. Braverman testified, the percentage of unhoused  
5 veterans suffering severe disorders is extremely high. He  
6 testified that it was approximately 90 percent of the veterans  
7 served by the West LA VA Medical Center.

8 He said they had -- that 90 percent, had a history of  
9 substance abuse disorder or mental health disorder or both,  
10 conditions that homelessness only exacerbates, and  
11 Dr. Braverman's conclusions are backed up by data reported in  
12 the draft master plan and the master plan.

13 As Dr. Henwood testified, homelessness has devastating  
14 health effects for people who experience it, including  
15 veterans.

16 He said there is constant stress that wears at the body.  
17 I know Your Honor saw that stress, on the body of the plaintiff  
18 witnesses who came into this courtroom.

19 He testified that there is also direct exposure to  
20 victimization and violence.

21 We know, he testified, that this accelerates the aging  
22 process, which has been well documented, including a shortened  
23 lifespan.

24 We are stealing their lives.

25 Dr. Henwood continued: If you've experienced long-term

1 homelessness, you can expect a shortened lifespan, research  
2 shows between 15 to 20 years on average.

3 Dr. Henwood continued: Without having a stable place,  
4 a safe place to live, people experience severe health  
5 disparities. The most severe in the shortened lifespan that we  
6 discussed could be by two decades because of accelerating  
7 agency, because of experiencing victimization, and violence on  
8 the streets.

9 He testified that homelessness can exacerbate existing  
10 health problems, that it makes it very difficult to manage any  
11 chronic condition, whether it's a physical or mental health  
12 condition.

13 He testified that homelessness will exacerbate symptoms  
14 of mental illness.

15 As Dr. Sherin testified, we know that people who live in  
16 the streets die at a much higher rate.

17 That living in the streets is, itself, a very toxic  
18 traumatic environment. That mental illness, serious mental  
19 illness and homelessness decreases not just lifespan, but  
20 livelihood.

21 No plaintiff -- no plaintiff, no member of the plaintiff  
22 class, no matter the severity of his or her disabilities,  
23 should have ever been unhoused and untreated as they were, not  
24 for weeks, not for months, not for years.

25 Ninth, the fiduciary duty and the Rehabilitation Act

1 issues in their case are redressable.

2 But ensuring such redress requires an enforceable order  
3 from this Court to start.

4 That order should require the VA to place temporary  
5 supportive housing units as, for example, described by Randy  
6 Johnson and Steve Soboroff. They're available.

7 They can provide that sort of redress onto the available  
8 parcels of the grounds that Mr. Johnson reviewed with counsel  
9 this morning, including locations identified by Dr. Braverman  
10 as warranting serious consideration.

11 Areas that will not interfere with ongoing construction.  
12 Even with the issues we had looked at yesterday regarding the  
13 landfill, that only took two places off of the list.

14 The tragic overarching fact proven in this case is that  
15 the veteran homelessness of disabled veterans in the case of  
16 those individuals living on the streets that swiftly remedial  
17 steps are available.

18 We are pleased, we are willing to use the most recent  
19 point-in-time count.

20 We can conclude there are currently some 300 unhoused  
21 veterans in Los Angeles in urgent need of housing today.

22 THE COURT: I think you meant 3,000; is that  
23 correct?

24 MR. ROSENBAUM: Say again?

25 THE COURT: I think you meant 3,000.

1 MR. ROSENBAUM: I did mean to say 3,000.

2 As Dr. Sherin testified, the fact is and I'm quoting:  
3 There are hundreds and hundreds of veterans who could probably,  
4 with appropriate outreach, be brought into temporary housing  
5 and a temporary community, in a very short period of time.

6 We can stop the suffering, engage with the resources  
7 Dr. Sherin said, and begin on their recovery pathway, and  
8 hopefully permanent housing in a permanent community.

9 No VA official challenged this conclusion.

10 Mr. Kuhn testified the temporary housing of the type  
11 described by Mr. Johnson and Mr. Soboroff raised no  
12 environmental concerns.

13 Dr. Braverman identified the sites north of Wilshire.  
14 As I said, maybe two of those sites were taken off, but they  
15 are worthy of investigation now as potential locations for this  
16 urgently needed housing.

17 The time to begin to build the structures that will work  
18 with this housing, that will help create a community, for  
19 example, by constructing the town center envisioned in the  
20 draft master plan, where veterans can heal, where veterans can  
21 recuperate and ultimately thrive is now also.

22 The government has not taken an opposite position.

23 As Mr. Kuhn testified, all of us want to live in  
24 communities that are vibrant, that have active socialization,  
25 commercial activity, retail space, places that make it feel

1 like a neighborhood, not just a place you go in to close the  
2 door.

3 That is not the description of the West LA grounds  
4 today.

5 In the words of Dr. Sherin, the big idea is to create an  
6 intentional community that would care for, house, provide,  
7 recovery opportunities and reintegration opportunities for vets  
8 who have not done well upon return from service, whether combat  
9 or not.

10 Dr. Sherin continued, it is a community defined by  
11 people, place, and purpose, a place where veterans can feel  
12 like they belong, can rediscover their purpose.

13 And as I stated earlier, Your Honor, the history of the  
14 predecessor litigation, the history of this litigation is that  
15 plaintiffs will be vindicated, that their rights will be  
16 vindicated only upon the issuance of an enforceable order by  
17 this Court.

18 Dr. Braverman testified that prior to *Valentini* there  
19 was no master plan, even though Los Angeles long had been known  
20 as the homeless veterans capital of the nation. Litigation  
21 made that master plan happen.

22 Litigation made the change in AMI policy happen.

23 Dr. Harris testified that he presented the case for  
24 changing HUD policy for years. He showed his PowerPoint to the  
25 Interagency Committee on Homelessness in June of 2023 to no

1 avail.

2 And he testified, and Mr. Davis confirmed, that it had  
3 been prior to this Court's ruling, the position of HUD that it  
4 lacked authority to change policy and that the issue did not  
5 warrant exercise of the agency's waiver authority.

6 That changed within weeks, once the Court ruled that the  
7 policy was facially discriminatory.

8 We know that there are within the VA well-intentioned,  
9 capable and motivated individuals who are prevented from doing  
10 their best by the government's deeply broken system.

11 Given the opportunity to work collaboratively where what  
12 is mandated is compliance with the law and the VA's fiduciary  
13 duty, they and others like them, working with experts like  
14 those who appeared in this courtroom, can and will play  
15 significant roles in ending veteran homelessness in Los  
16 Angeles.

17 Let me turn now to the remedy that the Court asked  
18 about.

19 This is set out in more detail, Your Honor, in our  
20 findings and conclusions, but I want to talk to the Court about  
21 its elements, its components of phasing in and being sensitive  
22 to the actual needs and ground and to providing that relief  
23 urgently.

24 First, we are asking the federal defendants be enjoined  
25 from contracting with developers who include disability

1 benefits as income.

2 Second, we are asking the federal defendants be enjoined  
3 from failing to provide plaintiffs and the class they represent  
4 with appropriate permanent supportive housing at or near the  
5 West LA grounds so that they can reasonably access the  
6 healthcare benefits for which they are eligible in the most  
7 integrated setting appropriate to their needs.

8 This includes providing homeless veterans who are living  
9 in the community with access to transportation to and from the  
10 West LA Grounds and increased evidence-based case management  
11 services.

12 We are asking that within 12 to 18 months of this  
13 Court's order, the federal defendants provide 750 temporary  
14 supportive units on the West LA Grounds.

15 These units shall be phased in such that all units are  
16 in place and operational within 18 months of the Court's order.

17 And we are saying, of course, that the 750 units of  
18 temporary supportive housing be placed on the campus so as not  
19 to interfere with current or planned construction activities  
20 that relate either to permanent supportive housing or the  
21 provision of medical services.

22 Your Honor saw, this morning, potential locations for  
23 those 750 units of temporary supportive housing units, where  
24 they are to be placed, the options on the map, they have now  
25 been submitted to the Court as Exhibits 248, 249, and 250.

1 We are asking that within six months of this Court's  
2 order, the federal defendants, in consultation with plaintiffs'  
3 counsel, and a Court-appointed monitor, develop a plan for the  
4 construction of an additional 1,800 units of permanent  
5 supportive housing units to address veteran homelessness within  
6 the West LA VA catchment area and a development -- the long  
7 overdue development -- of the connective tissue town center, on  
8 the West LA Grounds.

9 We are asking that this plan include a timeline such  
10 that the 1,800 permanent supportive housing units and the  
11 connective tissue shall be built and operational within six  
12 years of this order.

13 We are asking for federal defendants to commence active  
14 construction of the town center described in the 2022 master  
15 plan within 12 months of Your Honor's order.

16 And, of course, as to both the temporary and permanent  
17 supportive housing units, that the Court retain jurisdiction to  
18 adjust the number of units in each category in order to closely  
19 approximate the adequate need for housing as reflected in one  
20 or more counts of homeless veterans in the West LA catchment  
21 area.

22 We are asking the Court to issue an order that all  
23 permanent supportive housing services meet evidence-based  
24 practices; that they must be provided according to a permanent  
25 centered care plan, that they must be monitored by audits, for



1 which the VA takes responsibility and that are publicly  
2 available and by an expert in permanent supportive housing.

3 We are asking that federal defendants -- that the Court  
4 issue an order that federal defendants staff its HUD-VASH  
5 program to provide at least 25 referrals to public housing  
6 authorities per week.

7 We are asking for an order that federal defendants staff  
8 its caseworker ranks to reduce attrition from the HUD-VASH  
9 program due to public violations.

10 And we ask that this be put into the SCIPs which, as  
11 Your Honor heard, the parts of the settlement have been ignored  
12 and are still far too general with respect to the order.

13 We are asking that the federal defendants increase its  
14 staff -- street outreach staff, in the catchment area from 13  
15 to at least 26, and I'm talking about 26 individuals who  
16 actually go out into the streets with a sufficient number of  
17 veteran peers within one year of this order.

18 We are asking that for any permanent supportive housing  
19 on the West LA Grounds, federal defendants employ the most  
20 efficient, affordable and time-sensitive conventional financing  
21 of its housing projects.

22 We are asking that a monitor be appointed to oversee and  
23 report to the Court on a regular basis on the federal  
24 defendants' compliance with this Court's order, which includes  
25 an audit within six months of this Court's order and subsequent

1 audits to evaluate the federal defendants' compliance with this  
2 Court order.

3 We are asking that the federal defendants be prohibited  
4 from executing and maintaining any land use agreement,  
5 including those identified -- as I have described that does not  
6 primarily benefit veterans and their families pursuant to the  
7 West LA Leasing Act of 2016 and its 2021 amendment.

8 We are asking the Court to declare the land use  
9 agreements with Brentwood, with UCLA, with SafetyPark, and with  
10 Bridgeland to be illegal.

11 We are asking as the prevailing party we be permitted to  
12 obtain our reasonable attorneys' fees and costs.

13 Your Honor, the government's answer to all of this, all  
14 of this suffering is exactly the same as it was 13 years ago in  
15 *Valentini*.

16 Trust us. We're making improvements. We're making  
17 progress. We've got it, just be patient.

18 While I hoped there'd been some improvements in these  
19 years, though the role of this Court in getting there, is  
20 undisputable.

21 It was refreshing to hear Mr. Simms acknowledge that  
22 mistakes had been made, albeit in an attempt to justify the  
23 terrible and unnecessary delays that have been visited upon  
24 veterans, it is both frustrating and telling that this  
25 acknowledgement comes only as government seeks, once more, to

1 evade its legal responsibility for these same mistakes.

2 Enough. Time is up. We cannot morally or legally ask  
3 our veterans to wait any longer for a plan and an execution of  
4 the plan to end homelessness for the their disabled brethren,  
5 to end that once and for all with enforceable accountability.

6 We cannot ask our veterans to hold on while the VA  
7 flouts its stated mission and tarnishes the promise of Lincoln,  
8 quoted in the master plan, quote: To care for those who have  
9 served in our nation's military.

10 We cannot ask that of the 3,000 veterans on the streets  
11 of Los Angeles tonight.

12 Many of whom are disabled.

13 We cannot ask that of their loved ones. We cannot ask  
14 that of the future unhoused veterans who will be irreparably  
15 harmed if something is not done.

16 We cannot tell that to the spirits of those unhoused  
17 disabled veterans who perished waiting for their government to  
18 serve them as they served their government.

19 It is time, it is long past time, for all disabled  
20 veterans to come home.

21 Everyday Americans rise all over this country and sing  
22 the words: Home of the brave.

23 But these words are meaningless in Los Angeles, where  
24 veterans have had their home taken from them, and there is no  
25 home. No community rebuilt to restore what was lawfully

1 theirs.

2 In Los Angeles, the home of the brave is, instead, the  
3 home of the UCLA Bruins, the Brentwood Eagles, or the oil  
4 industry, or the Brentwood Chamber of Commerce.

5 Our government can do better.

6 The VA has 388 acres and a moral and legal obligation to  
7 the disabled veterans it professes to serve. It's time to get  
8 it right.

9 We implore this Court to make it so that the brave have  
10 the home to which they are lawfully entitled.

11 Thank you very much.

12 THE COURT: Thank you, counsel.

13 Would 15 minutes be acceptable, 15 or 20 minutes? All  
14 right, then we're in recess.

15 We will resume in 15 to 20 minutes.

16 (Afternoon recess.)

17 THE COURT: We're back on the record, all counsel  
18 are present, the parties are present.

19 Who will be arguing for the VA?

20 MR. ROSENBERG: I assume I will, so, yes.

21 THE COURT: The VA? Then will HUD argue separately?

22 MR. ROSENBERG: Oh, no, no, the Department of  
23 Justice represents both of those.

24 THE COURT: So you are arguing on VA's and HUD's  
25 behalf.

1           Then, Bridgeland, is that acceptable?

2           MR. GUADIANA: Yes.

3           THE COURT: Thank you, counsel.

4           MR. ROSENBERG: Brad Rosenberg on behalf of the  
5 United States.

6           Nearly a month ago, I stood here and emphasized a few  
7 key themes that this Court would hear throughout this trial.

8           Now there have been a couple of zigs and zags along the  
9 way.

10           Yesterday, I believe we heard testimony about protons  
11 and neutrons and heavy water, but by and large what I predicted  
12 this Court would hear in testimony at trial, came to be true.

13           I spoke about VA's creative approach to addressing the  
14 homeless veteran situation in Los Angeles about how VA  
15 employees, such as John Kuhn and Sally Hammitt, were dedicated  
16 to solving the problems in new ways.

17           I spoke about One Team, I spoke about the progress that  
18 VA has made in reducing veteran homelessness.

19           And I spoke about how we are in a different situation  
20 now than we were just a few years ago.

21           I also mentioned the extraordinary steps that HUD has  
22 taken over the years to try to solve the problem of veteran  
23 homelessness.

24           At the time, of course, I alluded to possible changes  
25 that might be on the horizon, because as a Department of

1 Justice attorney, I can't get out ahead of what an agency does,  
2 but of course in the midst of this trial, HUD changed its AMI  
3 rule.

4 We have presented evidence on all of these topics.

5 And as I'll explain in this closing argument, because  
6 this is the legal issues that this Court has to decide.

7 Plaintiffs have failed to carry their burden on their claims,  
8 and even if this Court finds otherwise on the Rehab Act claims,  
9 we have carried our burden on the affirmative defenses.

10 Accordingly, and on the issues that this Court is  
11 resolving at trial, it should enter judgment for the government  
12 and it should do so confident that both VA and HUD are acting  
13 in compliance with the law, and are making substantial progress  
14 on the problem of homeless veterans in Los Angeles.

15 So let's start with the accomplishments that I alluded  
16 to during the opening.

17 I want to speak about some of John Kuhn's initiatives,  
18 in particular, and One Team.

19 Incidentally, I find it passing strange that on the one  
20 hand, plaintiffs are prepared to criticize the situation in Los  
21 Angeles as being fragmented and haphazard in terms of how  
22 veterans access services, and then on the other hand,  
23 criticizing VA for trying to break down the barriers that exist  
24 between the federal government and all of the local housing  
25 agencies and other entities that have value that they can bring

1 to the table.

2 VA can't do it alone. We have never contended  
3 otherwise.

4 But by being able to take advantage of those resources  
5 that already exist, and making the sum greater than the  
6 individual parts, VA and its partners can make significant  
7 progress and have made significant progress in solving the  
8 homeless veteran crisis.

9 So what is One Team?

10 It was described as a concept during the testimony at  
11 trial, but really it's also more of an action plan.

12 So Mr. Kuhn testified, and this is up on the screen, on  
13 day five of the trial, that the idea is that any place a  
14 veteran connects to services, any place is the right place.

15 So it doesn't become bouncing a veteran from one place  
16 to another as they -- to get services.

17 We want to engage that veteran at the moment they ask  
18 for care, wherever they ask for care.

19 It could be at VA, it could be elsewhere in the  
20 community.

21 Only by communicating and working together, can you  
22 harness those powers and take advantage of the resources that  
23 others have to bring to the table.

24 Ms. Hammitt also testified about One Team.

25 What is it? According to her testimony in day four of

1 the trial, One Team means that -- VA can't do it alone, and we  
2 need all of our partners. We need everyone in our system  
3 coming together and creating an effective and efficient way,  
4 systems, to end homelessness.

5 Because there are resources in this community, and for  
6 better or worse, the community that VA and HUD and plaintiffs  
7 find themselves in in the Greater Los Angeles area, is  
8 fragmented.

9 There are different agencies for the City and the  
10 County, there are different stakeholders, and we posit that it  
11 is better to try to work together than to simply have one  
12 agency go it alone, and particularly, to have one agency go it  
13 alone under the Court order that plaintiffs seek.

14 What are the results?

15 Since VA has implemented a One Team approaching  
16 permanent housing plaintiffs have increased 38 percent. There  
17 was testimony on that by Sally Hammitt on day four of the  
18 trial.

19 Plaintiffs just now have criticized VA's ability to keep  
20 track of veterans. But 90 percent of veterans on the by-name  
21 list have been assigned to a service provider.

22 And as a practical matter, Judge Carter, that means that  
23 virtually every veteran that VA actually connects with has a  
24 service provider.

25 One Team is broad. You have heard testimony throughout



1 this trial about the role that Mr. Reynolds has played. Let me  
2 just say if I haven't before, thank you to Mr. Reynolds,  
3 because he has been a passionate advocate for homeless  
4 veterans, he's sitting on that side of the courtroom and he  
5 supports plaintiffs' cause of action here. That's fine.

6 People can have different points of view, but  
7 notwithstanding that, the VA is ready, willing, and able to  
8 work with and has worked with Mr. Reynolds and others to try to  
9 solve this problem that we have in Los Angeles regarding  
10 homeless veterans, and VA has made substantial progress.

11 Now let's talk about the campus, the West LA Campus  
12 itself and how that fits into the larger puzzle.

13 This is something else that I alluded to in my opening  
14 statement nearly a month ago.

15 I believe I said something along the lines of "the  
16 campus is an important piece of the puzzle, but it's not the  
17 only solution." You've heard testimony on that.

18 Now, of course in a trial, you have the unenviable task  
19 of trying to decide between conflicting testimony or even  
20 consistent testimony, what the story is.

21 Well, Mr. Kuhn has spoken about the idea of choice. And  
22 I suppose one area where we diverge from plaintiffs is the idea  
23 of meeting veterans where they are and providing them with the  
24 services where they are.

25 I'm sure a great many of them would like to be near the

1 West LA Campus, but there are many others who live elsewhere in  
2 Southern California.

3 You heard, and you heard just now from plaintiffs in  
4 their closing argument, about project-based housing being  
5 located at locations far away from the West LA Campus.

6 Well, there are veterans who live and have chosen to  
7 live in locations far away from the West LA Campus. The  
8 veteran living in San Luis Obispo, why should they have to come  
9 down to West LA to have housing where instead they can have  
10 housing where they already are. And that's part of meeting  
11 veterans where they are.

12 So Mr. Kuhn has spoken about this, and this is on day  
13 five of the trial: Well, I have talked repeatedly about  
14 providing veterans with choice, and creating pathways to  
15 housing that meet their needs. Many veterans don't want to  
16 live in West LA, they don't want to live in a hospital, they  
17 want to live in the community.

18 They want to be a part of something different, maybe  
19 they have local connections to different areas, but, you know,  
20 there are real connections for a lot of veterans about living  
21 on the hospital grounds, but for many veterans, it's something  
22 they want, so we want to be able to offer both.

23 THE COURT: You said "connections" I think you meant  
24 "concerns."

25 MR. ROSENBERG: Concerns, correct. Thank you, Your

1 Honor.

2 VA does offer both. It meets veterans where they are.

3 There are other solutions to the challenges that we are  
4 facing beyond the campus.

5 Recall Mr. Kuhn spoke about bulk leasing, the two bulk  
6 leasing projects that VA has engaged and where it provides  
7 services and rent.

8 I spoke in my opening about the benefits of bulk leasing  
9 and Mr. Kuhn spoke the benefits of bulk leasing.

10 So on day five of the trial, as Mr. Kuhn noted: For us  
11 it means, especially with tenant-based housing, where we have  
12 very low utilization rate where we have to go traditionally  
13 with veteran apartment by apartment, one by one, a very  
14 time-consuming process, where veterans often get rejected.

15 We now have bulk buildings we know we can get a veteran  
16 into, that the whole process is short-circuited and we look  
17 into getting these buildings in areas we want to, we would live  
18 in.

19 That is a solution to the homeless veteran challenge in  
20 Los Angeles. That is quick, because when the building is  
21 bulk-leased, a veteran can move right away.

22 It doesn't require the construction of temporary housing  
23 on the West LA Campus.

24 If this Court is concerned about whether or not homeless  
25 veterans can be provided with housing quickly, all options need

1 to be on the table, not just the development of the campus.

2 And the challenge for VA and for this Court, if it were  
3 to enter relief, and as Dr. Braverman has testified, is that  
4 budgeting requires choices.

5 VA is pursuing innovative approaches such as bulk  
6 leasing. But if those resources are then diverted to  
7 additional housing on the campus, and I will discuss additional  
8 housing on the campus in just a little bit, that may remove the  
9 flexibility from VA that it needs and that it has been using,  
10 particularly in the last few years, to make real progress  
11 regarding homeless veterans. Real progress.

12 The Court can hold VA's feet to the fire, but as we have  
13 shown throughout this trial, VA has made real tangible  
14 progress.

15 So let's talk about HUD-VASH for a moment.

16 And this is in the context of One Team as well.

17 You have heard testimony about how HACLA meets with  
18 senior VA officials, such as Mr. Kuhn and Ms. Hammitt, and on a  
19 staff level, they meet on a daily basis. They coordinate, they  
20 try to break down those barriers, and we have seen results.

21 VA has substantially increased its referral rate and the  
22 Court can find that on day four of this trial's testimony  
23 around pages 111 and 113.

24 Do you remember how my colleague, Mr. Knapp, walked  
25 Mr. VanNatter through a series of HUD-VASH monthly reports?

1 I was scratching my head wondering why he was showing  
2 each of those monthly reports one after the other and those  
3 were Exhibits 1628, 1629, 1630, 1631, 1632, and 1633. This was  
4 on day 11 of the trial.

5 But you know what? When you look at all of those  
6 reports, there have been 347 tenant-based referrals within the  
7 first six months of this year.

8 And we're only as of six months, a year is 12 months.  
9 We're only halfway through the year at that point.

10 And yet VA had already surpassed the number of referrals  
11 in every year since 2020. Again, tangible real results.

12 There were also 286 project-based referrals so far this  
13 year, and the attrition rate is under 5 percent this year.

14 You have heard testimony from HUD, plaintiffs have  
15 alluded to this, regarding small area FMR and exception payment  
16 standards whereby HUD has substantially increased the value of  
17 HUD-VASH vouchers and has facilitated the access to additional  
18 housing.

19 Some parts of Los Angeles are more expensive than  
20 others, particularly around the West LA Campus. This allows  
21 those rental payments to match local market conditions.

22 And HACLA has taken advantage of that. You heard that  
23 through HACLA's testimony, they've confirmed they have seen  
24 success in the West LA area. So, again, real, tangible,  
25 concrete and significant progress has been made.

1           Currently, Judge Carter, there are 5,300 homeless  
2 veterans who are housed by HUD-VASH.

3           That is a substantial number.

4           Perhaps the best indicator of the results that VA's  
5 collaboration with HUD has received are in the PIT count  
6 numbers.

7           You have in front of you Exhibit 1334, page 1. Those  
8 numbers speak for themselves, however, because there is a court  
9 reporter, I unfortunately have to speak for them a little bit  
10 to get this on the record.

11           LA City 2024 veteran PIT count down 32 percent from  
12 2023, versus 2 percent for the overall population.

13           Is there still a ways to go? Of course.

14           But those are real and meaningful numbers, especially  
15 when compared to the overall population.

16           If we look at the next page of the slide, and this is  
17 Exhibit 1334, page 2. For the County, the LA County 2024  
18 veteran PIT counts down 23 percent from 2023 versus unchanged  
19 for the overall population.

20           That's real progress.

21           You know what, plaintiffs' expert agrees.

22           Dr. Sherin was asked a question:

23           "But would you acknowledge that a 25 percent decrease in  
24 the population of homeless veterans, that is a substantial  
25 figure, is it not?

1 "I agree it is a substantial figure, if it's real, for  
2 sure."

3 Now, one of the most interesting exchanges during this  
4 trial was during the examination of Mr. Kuhn and he was asked  
5 about the concept of Functional Zero.

6 And as the Court may recall, the concept of Functional  
7 Zero, it's a term used to describe getting to a point where any  
8 person who's homeless can quickly get back into housing.  
9 There's always going to be a little bit of churn with  
10 homelessness because some people, for reasons, high rent, job  
11 circumstances, other circumstances, may lose their housing.

12 But the idea is you don't want people to stay out of  
13 housing, you want to get to a Functional Zero point so that  
14 when people need services and they can get back into housing,  
15 they can do so.

16 Mr. Kuhn was asked about that.

17 He was asked about other cities respectfully, much  
18 smaller cities, much less complex cities than Los Angeles and  
19 whether they have reached Functional Zero.

20 So the lessons -- and he said:

21 "The lessons that are being applied in West LA and it's  
22 not just me, it's a collective effort undertaken by our  
23 partners, the County, our nonprofit partners, have been  
24 working, so the evidence is in the outcomes.

25 "QUESTION: I didn't mean to interrupt you.

1           When can we expect Functional Zero at the West LA VA  
2 Campus?"

3           And Mr. Kuhn, unequivocally, clearly, and immediately  
4 and confidently stated:

5           "Two years.

6           "QUESTION: Two years?

7           "ANSWER: Two years."

8           That is what VA is working towards. That is what the  
9 testimony at trial reveals, that they're on track to get to  
10 Functional Zero in two years.

11           So these are real results. And as the Court weighs  
12 whether or not VA has violated the Rehabilitation Act, whether  
13 or not there has been a breach of fiduciary duties and we'll  
14 get to that in a few minutes, and whether or not it should  
15 grant the relief that plaintiffs are requesting, it should  
16 think long and hard about these real results that VA has  
17 achieved and that we have demonstrated through this trial,  
18 because this is a success.

19           So let's talk about where we are on the West LA Campus  
20 now.

21           And there's been a lot of testimony about CTRS, what its  
22 role is, and there's been some criticism of CTRS.

23           But if you think back to Mr. Kuhn's testimony about  
24 meeting veterans where they are, CTRS is a valuable tool with a  
25 low barrier to entry to getting veterans off the streets and on



1 a path to stable, long-term permanent housing.

2 Is CTRS itself permanent housing? No, of course not.  
3 But it is a tool that VA has used and has been successful with  
4 to get veterans into their system so they can begin the process  
5 of reaching out to them and providing them with services.

6 So Mr. Kuhn testified about this:

7 "QUESTION: And, in your opinion, have those been --  
8 has the CTRS drop-in beds been a successful way of engaging  
9 veterans?"

10 I'm going to pause there and stop reading that  
11 transcript for just one moment, because that is a critical  
12 point. It's not just about providing the housing.

13 I think plaintiffs would agree on this point.

14 It's about engagement. It can be a hard-to-reach  
15 population.

16 And so you have to have a lot of different tools in your  
17 toolkit. For some people, and we'll hear about this in a  
18 minute or two, CTRS is a great tool. For other people it might  
19 not work. But it should not be a one-size-fits-all approach.

20 So let me go back to the transcript.

21 "ANSWER: We always want enough types of capacity  
22 that we can engage as many veterans as possible."

23 You know, this goes back to what I was saying earlier,  
24 that we can't think of homelessness as this -- you know,  
25 monolithic beast. It's individuals, it's a bunch of veterans

1 all with different needs and willing to do different things.

2 So by offering as many pathways as possible, the idea is  
3 if you make the highway as wide as possible, if you will, we  
4 are going to have more traffic coming in, the ability to serve  
5 more people, and meet the needs of the veterans as they  
6 experience them, not as we want them to be.

7 It is a valuable tool. And I believe the testimony in  
8 this trial is that it's a unique tool to LA.

9 If I recall correctly, and I don't have all of the  
10 transcripts in front of me, I believe they might be looking at  
11 something like CTRS in one other city, I believe it might be  
12 Philadelphia as a model, but this is something that VA came up  
13 with here.

14 It used its creativity, constrained as the agency is by  
15 the statutory authorities that govern it, to try to come up  
16 with a solution. And then it modified that solution, it added  
17 more units along the way to try to reach out and engage  
18 veterans.

19 So what are those services at CTRS? Because, again,  
20 it's more than just vets.

21 As Ms. Hammitt testified: And we also have individuals  
22 that may have never utilized our system. And so it gives them  
23 a safe place to immediately come in and connect with the  
24 services that they may need or want to be successful.

25 Ms. Hammitt spoke further about CTRS, this is all in day

1 four of the trial: We have peers and social workers and -- we  
2 have people coming from other services down to CTRS that are  
3 nurses. And so, in CTRS, for basics, individuals get a  
4 shelter. They have access to clothing, if that is not  
5 something they have.

6 They have access to three meals a day. They have  
7 laundry services, they have showers. And they also have a team  
8 of people that can offer them opportunities to engage in  
9 medical services, mental health services, recreational  
10 services, and employment services.

11 Start to bring them into the system so that you can  
12 start to provide those services. That's what CTRS does.

13 And CTRS is popular. We heard that from one of the  
14 named plaintiffs in this lawsuit, Mr. Pettitt.

15 He testified very openly: I mean, for me, I liked it,  
16 it was cool. Coming from a tent or even coming from nothing at  
17 the time, I remember I just slept on the sidewalk with my dog,  
18 so for me it was great.

19 I didn't have to pay rent, it was something I got into  
20 that day. Like, hey, man, if you are still using, here is a  
21 safe place for you to use, at least. I think the tiny homes  
22 are great. I don't care what anybody says.

23 Again, we are not representing that CTRS is a permanent  
24 home, but it is an example of a valuable tool that VA created  
25 to try to help veterans by getting their foot in the door so

1 that they can then access the many services that VA provides.

2 And speaking of those services, I would be remiss if I  
3 didn't mention that virtually all of the testimony this Court  
4 has heard regarding the medical services that VA provides, has  
5 been exemplary.

6 You heard witness after witness talking about how great  
7 the healthcare is that VA provides.

8 That is part of VA's core mission and it is very good at  
9 that.

10 And VA does want to help all of the veterans that it  
11 serves access those healthcare services.

12 So let's talk about some of the other services that are  
13 provided on the West LA Campus.

14 And when I talk about services, plaintiffs might phrase  
15 that as the third-party land use agreements with organizations  
16 such as the Brentwood School, Bridgeland, SafetyPark, and the  
17 like.

18 But the reality is, and this Court has heard testimony  
19 about the services many of those entities provide.

20 This Court has already held that VA has a fiduciary  
21 obligation that effectively became enforceable due to the  
22 passage of West Los Angeles Leasing Act.

23 So the question that this Court has to decide is whether  
24 VA breached its fiduciary obligations with respect to those  
25 third-party land use agreements.

1 As I said in my opening, determining whether there is a  
2 breach is context specific.

3 And the context here is that at the time VA's fiduciary  
4 obligations became enforceable in 2016, it had inherited a slew  
5 of land use agreements.

6 And you heard Dr. Braverman testify about how VA  
7 canceled many of those agreements.

8 But there are some that weren't canceled and those are  
9 at the heart of plaintiffs' fiduciary claims in this lawsuit.

10 And the question is, why weren't they canceled?

11 That goes to the fiduciary obligation.

12 We would posit that if VA has a fiduciary obligation,  
13 that includes maximizing the benefits that it receives from  
14 third parties who have land use agreements with VA.

15 And simply canceling those agreements could lead to  
16 costly litigation for VA, or cost VA money to maintain those  
17 facilities, or potentially remove those facilities, or could  
18 lead to the reduction of services that those third parties are  
19 providing.

20 You see, being a fiduciary is fact specific. It's not  
21 simply, this land was deeded to veterans and so anything that  
22 plaintiffs think might violate that fiduciary duty violates a  
23 fiduciary duty.

24 A fiduciary has to look at the facts that they are  
25 confronted with and decide based on those facts and based on

1 the constraints that the agency has by statute, by potential  
2 litigation risk, how does it maximize the benefits for the  
3 veterans.

4 The unfortunate reality is that for many of the land use  
5 agreements that VA had that it didn't cancel, it was stuck.  
6 For various reasons, it was stuck.

7 And it did its best to try to maximize those benefits,  
8 and we will step through some of those, but it would not be in  
9 VA's fiduciary interest to subject itself to litigation, lose  
10 services, and incur additional expenses.

11 So let's take the Brentwood School. And I have put on  
12 the screen Exhibit 2 at page 96, this is the management  
13 response to the first Office of Inspector General report.

14 As the Court may remember, the way that the OIG process  
15 works is that the OIG issues a draft recommendation to the  
16 agency, management has an opportunity to respond in writing,  
17 and that is folded into the final report.

18 Of course, ultimately the OIG disagreed with management  
19 on this issue, but this does reflect the agency's view and  
20 succinctly wraps up the conundrum that VA faced.

21 As a practical consideration, VA notes that the finding  
22 that the Brentwood School lease is deficient because the  
23 principal purpose of the lease is to provide Brentwood School  
24 continued use of the athletic facilities can be corrected only  
25 by discontinuing that use.

1 With respect to this lease, then, recommendation one,  
2 take action to correct deficiencies noted in this report  
3 requires VA to terminate the lease and bar Brentwood School  
4 from using the facilities it has constructed on the campus.

5 Any action VA might take to comply with this  
6 recommendation would likely trigger a litigative challenge -- I  
7 stumbled on that word earlier in trial -- that could  
8 indefinitely suspend both the lease termination and VA's  
9 authority to carry out the EULs to house homeless veterans.  
10 This outcome is patently unreasonable.

11 And Dr. Braverman testified on this issue.

12 He noted that in addition to the potential litigation,  
13 there would be cost to take over the buildings or demolish them  
14 on the 22 acres.

15 VA doesn't have the resources to operate those  
16 facilities.

17 This Court has been to the campus, has seen some of the  
18 facilities on the campus that are underresourced.

19 It's also seen the incredible progress the VA has made.

20 If VA were required to take over the Brentwood 22 acres,  
21 it would likely end up in disrepair in the same way that some  
22 of the other non-medical facilities on the campus have gone  
23 into disrepair over time.

24 I'm thinking in particular of the Japanese Garden where  
25 VA once had a land use agreement to maintain the garden. It

1 was terminated pursuant to OIG's recommendation and the garden  
2 is in a state of disrepair. And that's unfortunate, but again  
3 budgeting requires choices and VA doesn't have the resources to  
4 maintain something like the Brentwood School's athletic  
5 facilities.

6 But that is the practical reality that termination of  
7 the lease would result in.

8 Now, Congress has been aware of the land use agreements.  
9 The Court may remember this document, Exhibit 1293.

10 This is the Congressionally-mandated report pursuant to  
11 the West Los Angeles Leasing Act of 2016 from September  
12 of 2023.

13 We entered all of these reports into evidence.

14 But these are reports that VA is required to provide  
15 pursuant to the leasing act. So we can presume that Congress  
16 is aware of the existence of these leases, of the benefits that  
17 VA receives from these leases, and yet here we are. Those  
18 leases are still in effect. Congress has not taken action  
19 otherwise.

20 And the reality is the VA does receive at least from  
21 some of the land use agreements, substantial benefits.

22 For example, in the same report, Exhibit 1293 at  
23 page 17. This is for the Brentwood School. They provide  
24 annual rent. That rent goes into the lease revenue fund, which  
25 is a fund that VA can use for various purposes to serve



1 veterans on the campus.

2 My recollection is that the lease revenue fund can be  
3 used, for example, to help with the construction of temporary  
4 housing.

5 Money from the lease revenue fund has been used to  
6 support services such as CTRS.

7 And I don't know if you remember the testimony, it was a  
8 long time ago, but the testimony from the representative from  
9 the Brentwood School. She spoke about numerous in-kind  
10 contributions that the Brentwood School provides.

11 You have seen, as you toured the campus, those  
12 facilities, the VCRE, which is used by veterans, it's an  
13 athletic facility.

14 Currently the West LA Campus, at least to my knowledge,  
15 doesn't have a dedicated gym.

16 We talked about building a community requires services  
17 such as athletic facilities, Brentwood provides those athletic  
18 facilities.

19 If Brentwood is not providing those athletic facilities  
20 that is a cost that VA would need to incur.

21 In light of everything else that has gone on on the  
22 campus, it's not a cost VA can incur at this point in time.

23 Brentwood has provided meals, you've heard about that.

24 They have provided classes on the campus, including yoga  
25 classes, cooking classes, screenwriting classes, creative

1 writing classes.

2 You have heard testimony about how they provided an  
3 employment readiness seminar, about how they provided veterans  
4 with suits, about how they showed them how to use LinkedIn,  
5 about how in that class they do mock interviews and the like to  
6 prepare them for job searches.

7 Because, again, if you want to help veterans who are  
8 homeless, yes, you need to find them a home, yes, you need to  
9 integrate them into a community, but where feasible you also  
10 need to help them do things like find a job to the extent they  
11 are able, and we recognize, of course, that many veterans have  
12 significant disabilities, but that's not true of all of them.

13 So these are valuable services that can help integrate  
14 them into the community more broadly.

15 Of course, they provided financial literacy courses and  
16 scholarships and the Brentwood School provides transportation.

17 I want to speak about transportation for a moment  
18 because this Court has raised a question regarding  
19 transportation a couple of times in this trial, and plaintiff's  
20 counsel raised it in his closing.

21 Transportation is going to be an important part of the  
22 development of the West LA Campus.

23 As it continues to develop and build out, it's going to  
24 be become increasingly important that transportation be  
25 provided. VA does not have the authority to provide that

1 transportation.

2 The plaintiffs referred to Ride Share, and how VA --

3 THE COURT: I'm sorry, within the campus itself and  
4 out to Brentwood, are you speaking about, or coming from  
5 Lancaster, et cetera?

6 MR. ROSENBERG: So the Ride Share is from outside  
7 generally and plaintiffs referred, I believe, in their closing  
8 to cutting Ride Share for financial reasons. But there was  
9 testimony at trial, that the reason that Ride Share was  
10 discontinued is that VA had temporary authority pursuant to  
11 Izakson Roe, Section 4201, which is COVID-related authority, to  
12 provide Ride Share services and that when the public health  
13 emergency was declared over, VA lost that authority. That's  
14 what the testimony at trial demonstrates.

15 So relying on partners to help provide services like  
16 transportation is important.

17 I will also note, and this may be an issue of confusion,  
18 I think the Court has referred to the Brentwood lease expiring  
19 in 2026.

20 We have entered that lease into evidence, it does have a  
21 renewal term for ten years, and I just want to make sure the  
22 Court is aware of that.

23 Now, my colleague will address the lease or technically  
24 revocable license with Bridgeland, so I won't discuss that at  
25 length, but the Court did ask earlier today what is VA's

1 position regarding Bridgeland, and I think it's fair to say  
2 that VA would like to extract as much of a financial  
3 contribution as it reasonably can from Bridgeland because that  
4 is money that can be used to benefit veterans.

5 Let me talk about SafetyPark.

6 You have heard testimony about that parking lot. It's a  
7 little bit separated from the rest of the campus.

8 That is on a year-to-year basis. And, honestly, it  
9 would just be bizarre to terminate that lease -- or that land  
10 use agreement until an alternate use for that site becomes  
11 available.

12 All of the net revenue from SafetyPark goes to VA and  
13 goes into that lease revenue fund that allows for the provision  
14 of services for veterans.

15 If you cancel the lease, you lose the revenue.  
16 SafetyPark employs veterans. If you cancel the lease, those  
17 veterans will be out of jobs.

18 Now, at some point -- now, staring at the map with the  
19 landfill issue, but at some point when that's resolved, that  
20 land can go to a better use.

21 I don't think VA -- VA does not dispute that a parking  
22 lot up there is the best use for the land.

23 But until we figure out what the best use for that land  
24 is, let's at least get the revenue that we can from the parking  
25 lot and let's employ veterans in that parking lot.

1 Canceling that lease, out of principle, that's not for  
2 filling VA's fiduciary duties, it's the opposite.

3 I also want to touch briefly on the APA claims in this  
4 lawsuit, because the land use agreements are being challenged  
5 both under plaintiffs' fiduciary theory, but as the Court is  
6 aware, they also have brought a series of claims under the  
7 Administrative Procedure Act.

8 As the Court has previously acknowledged, under the  
9 Administrative Procedure Act any decision that the Court  
10 reaches is basically that of an appellate tribunal and it's  
11 based on the administrative record government has already  
12 filed.

13 Now, we have heard plaintiffs in their closing argument  
14 moving to amend their amended complaint to add a challenge to  
15 the UCLA.

16 We think at least regarding the APA claims, the ship has  
17 sailed a long time ago on that one. Because those  
18 administrative records were provided a long, long time ago, I  
19 don't know exact date, but it was the beginning of the  
20 discovery period in this case.

21 But I would also note that in addition to not evaluating  
22 the evidence adduced at trial for purposes of resolving the APA  
23 claims, it's also critical for the Court to remember what the  
24 scope of relief is under the APA claims, because under the APA  
25 you can't enter injunctive relief.

1           The appropriate action by the Court, if it finds that  
2 the leases are unlawful under the APA, is to set aside the  
3 agency action and remand to the agency for further proceedings.

4           I just want to make sure that the APA claims don't get  
5 lost in this analysis.

6           I want to speak briefly regarding the AMI issue.

7           As this Court is aware, HUD recently announced a change  
8 in policy excluding disability benefits for purposes of  
9 determining eligibility for HUD-VASH assistance.

10           Let me join plaintiffs and the Court in thanking  
11 Dr. Harris for his advocacy on this issue.

12           It has taken a long time.

13           I will also represent to the Court I have been at DOJ  
14 for quite a few years, and some of these underlying issues are  
15 complicated and extend beyond Los Angeles.

16           And there is an interagency review process that we have  
17 heard about during this trial. HUD also has equities obviously  
18 in its own policies and HUD and VA and Treasury needed to work  
19 through some of those issues.

20           Of course, Treasury is still working through those  
21 issues and, I, unfortunately, cannot get out ahead of the  
22 Department of Treasury regarding what their ultimate policy  
23 will be. And I recognize that puts this Court in a somewhat  
24 awkward position, but I can't make a representation about where  
25 Treasury is, until they take action. So that's where we are.

1 I will, however, note that the Department of Treasury is  
2 not a defendant in this lawsuit. We did raise as an  
3 affirmative defense that plaintiffs have failed to join  
4 necessary parties, and I believe in some of our pretrial  
5 filings, we specifically identified Treasury as a potentially  
6 necessary party.

7 But it does leave the Court in an awkward spot and to  
8 the extent that the Court is considering relief, for example,  
9 on Count 2, there are a lot of moving parts.

10 There are developers on the campus. You have heard from  
11 some of them yesterday regarding the landfill issues, but there  
12 are developers on the campus who would potentially be impacted  
13 by on a decision the Court would issue, because obviously they  
14 use low-income housing tax credits as part of their financing  
15 and that could have significant effects for those developers.

16 At the same time, I'm sure that they, like everyone  
17 else, are also waiting to see what Treasury does because that  
18 may also have an effect.

19 So we find ourselves in a situation where this is an  
20 evolving process, and again, I recognize this puts the Court in  
21 an awkward spot, but unfortunately, we are where we are.

22 But here is the key takeaway.

23 HUD has done just about everything that plaintiffs have  
24 asked it to do.

25 This was their main issue regarding HUD. They wanted

1 HUD to exercise its discretionary authority to exclude  
2 disability benefits. That's what they did.

3 And in addition to that, I have also discussed the  
4 various other steps that HUD has taken, because they, like VA,  
5 are committed to the right policy outcome here, but these  
6 issues are really complicated.

7 And at the same time, this is a Court of limited  
8 jurisdiction that has to resolve the concrete disputes that are  
9 before it.

10 And plaintiffs' primary concrete dispute with HUD is an  
11 issue that HUD has resolved from its perspective because,  
12 candidly, I can't think of anything else that HUD, as an agency  
13 defendant, can do at this point.

14 So let's turn to the development of the campus itself,  
15 which is where the Court has spent much of the past week or so.

16 And I think back to Dr. Braverman's testimony about the  
17 challenges with the development of the campus, and plaintiffs  
18 criticism of the pace at which VA has developed the campus, and  
19 my acknowledgement during the opening statement that there were  
20 delays. We own that. There were delays.

21 VA is catching up, but there were certainly delays.

22 You may remember the testimony that Dr. Braverman  
23 provided about -- I believe it was shortly after he became  
24 medical center director an asbestos pipe was struck and that  
25 created a problem. That is a historical problem.



1 This Court and every person who was here yesterday got  
2 to experience in realtime the challenges that VA faces in  
3 developing this 100-plus year old campus.

4 A campus that has a landfill in the middle of it.

5 That's a challenge that VA is trying to navigate. And  
6 it represents the types of challenges that the agency has faced  
7 and has overcome in getting to the point where we are now with  
8 real meaningful construction taking place on that campus.

9 And this is a unique campus. It's not just some  
10 apartment building, it's not just some housing development, it  
11 is 100-year old -- 100-plus year old campus with many  
12 historical buildings, significant medical uses, significant  
13 restrictions on how it can be developed. It's a real  
14 challenge.

15 We talked about power outages and Dr. Braverman  
16 testified about this issue in day six of the trial.

17 "Obviously nobody likes a power outage.

18 "QUESTION: But what are the impacts of a power  
19 outage or other utility disruption on a healthcare campus?

20 "ANSWER: Yeah, big impacts when the power goes  
21 out."

22 You may remember afterwards he discussed some of those  
23 impacts in the hospital setting. If somebody is undergoing a  
24 surgical procedure, they have backup generators, but there can  
25 still be glitches.

1           So the development of this campus presents unique  
2 challenges due to its history, due to the constraints, and due  
3 to the needs of the campus itself.

4           Brett Simms testified on many of those issues.

5           He testified about how NEPA would require VA to complete  
6 an environmental impact statement before thousands of  
7 additional permanent supportive housing could be developed on  
8 the campus.

9           VA issued a record of decision, that allows for the  
10 development of up to 1,622 permanent supportive housing units  
11 on the campus. That took VA two years to complete. It's a  
12 complicated process.

13           And, again, VA has to comply with NEPA, just as it has  
14 to comply with the West Los Angeles Leasing Act, with the  
15 Rehabilitation Act, with its fiduciary duties, and apparently  
16 with the mandates from CalRecycle. That's a difficult and  
17 tricky landscape to navigate.

18           You also heard testimony that if VA were required to  
19 prepare another EIS to evaluate additional permanent supportive  
20 housing units beyond the 1,622 that were analyzed; in other  
21 words, the additional permanent supportive housing units the  
22 plaintiffs are advocating for, that process could take the  
23 agency approximately two and a half years to complete.

24           You also heard about how the West LA Campus is a  
25 historic district listed in the National Register of Historic

1 Places and construction of permanent housing on the campus  
2 would need to satisfy that act.

3 Again, that is a lengthy process and I think the Court  
4 can appreciate the historical nature of the campus.

5 And you also heard Mr. Simms talk about the complexity  
6 of the EUL authority that it has and the complexity of  
7 financing, and those are issues that are implicated by this  
8 Court's decision on Count 2 as it interplays with HUD's  
9 decision on the recent AMI rule.

10 Now, candidly, plaintiffs' experts have given very  
11 little thought to these issues.

12 I want to start with the testimony of Mr. Soboroff, and  
13 I want to be clear about something, Mr. Soboroff is someone who  
14 has a great many accomplishments and his heart is in the right  
15 place.

16 But his experience does not map on to the issues for  
17 which plaintiffs have called him as an expert regarding the  
18 development of the campus.

19 So he was asked:

20 "Okay. Are there any other specific examples you  
21 can think of -- I'm sorry to make this a pop quiz -- about  
22 where permanent supportive housing could be placed based upon  
23 your understanding of the campus?

24 "ANSWER: Yes. And other than that, it is a pop  
25 quiz so, I mean, it's just not fair.

1 We're talking about people's lives, and all kinds of  
2 things."

3 I agree 100 percent with that last clause, that we're  
4 talking about people's lives and all kinds of other things.

5 And some of those all kinds of other things include VA's  
6 efforts over eight years to develop the campus through the  
7 preparation of a draft master plan and master plan 2022.

8 It includes the investments to the tune of hundreds of  
9 million of dollars in infrastructure and other upgrades that  
10 it's made on the campus.

11 It includes the many agreements that VA has entered into  
12 develop the campus and balance the needs of housing against the  
13 medical needs and to create a cohesive campus.

14 And, unfortunately, when plaintiffs' experts came in to  
15 testify, they were not prepared to discuss where that permanent  
16 supportive housing should go.

17 Another example of that:

18 "Do any others come to mind? Again, pop quiz."

19 Okay. So he was not prepared to testify on these  
20 issues.

21 And you know he did provide one or two sample areas  
22 where permanent supportive housing could be located during his  
23 testimony at trial, but I would note none of those were  
24 disclosed in his expert report.

25 That is meaningful, because it has not provided us with

1 a fair opportunity to prepare.

2 Finally, when discussing the context of permanent  
3 supportive housing the Court asked him:

4 "You are my expert and I'm depending on you."

5 His answer is:

6 "Don't."

7 Again, I have full confidence his heart is in the right  
8 place, he has a great deal of expertise, but on these issues,  
9 on the issues in which plaintiff has asked him to testify, it's  
10 not in his wheelhouse and we would caution the Court about  
11 relying upon his testimony based on what he has said.

12 Mr. Johnson, we've heard from him a couple of times.

13 He has testified, at least previously, that he would  
14 like to demolish 55 buildings on this campus. He's a  
15 developer, developers like to develop.

16 But this is a unique campus run by government with  
17 unique obligations and constraints.

18 He also testified about how he wants to implement  
19 Alternative C. It's part of the environmental impact process,  
20 but that was found to have a significant adverse impact on the  
21 campus and the potential delisting of the campus as a  
22 historical district.

23 So the Programmatic Environmental Impact Statement  
24 record decision, I'm just going to read part of this, this is  
25 from exhibit -- I believe it's 143, although my notes say 147.

1 My apologies for that, but it's from one of those two.

2 "Overall the adverse impacts of new construction may be  
3 mitigated by applying the construction guidelines outlined in  
4 the SOI standards or the CHRP, once finalized.

5 However, given the irreversible adverse effects of  
6 demolition that would precede new construction, Alternative C  
7 presents an overall impact that cannot be fully mitigated."

8 This is a constraint on the agency. It is also a law  
9 that the agency needs to comply with in good faith.

10 Of course, the agency has discretion in terms of how it  
11 goes through that process, but it can't just be brushed aside.

12 Regarding the development of permanent supportive  
13 housing, there are some areas where the parties agree or at  
14 least the parties' experts.

15 Mr. Kuhn and Dr. Sherin seem to be generally on the same  
16 page about what they envision for permanent supportive housing,  
17 although, they disagree about the numbers.

18 Mr. Kuhn was asked about -- and I'm going back to  
19 plaintiffs' original request for a total of 4,000 permanent  
20 supportive housing units on campus.

21 And he said having 4,000 permanent supportive housing  
22 units on campus exceeds demand because permanent supportive  
23 housing serves only a subpopulation of homeless individuals.

24 But it would also impact the community, and this is  
25 where Mr. Kuhn and Dr. Sherin's testimony generally line up,

1 generally on the same page.

2 Mr. Kuhn said day five around page 110 of the  
3 transcript.

4 "I can't say this any more plainly, it will be an  
5 environment that no veteran will want to live in.

6 There is not a reputable provider of services in the  
7 country of homeless services who would suggest having a  
8 concentration of 4,000 permanent supportive housing units  
9 clustered in one area is a good idea."

10 Now, you heard John Kuhn testify. I think there can be  
11 no doubt about his commitment to ending homelessness among  
12 veterans. And there can be no doubt about the creativity that  
13 he brings to his work and the unique ability that he has to  
14 navigate what can be described as a bureaucratic process.

15 Actually, can you put that slide back up for a second?

16 Because for him to say that, a man who has dedicated his  
17 career to ending homelessness, that is telling.

18 But that is the community that plaintiffs would have  
19 this Court create, one in which no veteran will want to live.  
20 And it's not for lack of good intentions, but these are tricky  
21 issues, Judge Carter.

22 He spoke about this at some length, because he feels  
23 passionately about it, and rightly so, in the context of  
24 concentrating permanent supportive housing on the campus.

25 Mr. Kuhn said:

1            "We're going to have a large number of behavioral  
2 health incidents stemming from people's behavioral problems.  
3 It's going to make it difficult for veterans who are doing well  
4 to live in an environment where there is frequent mental health  
5 crises, widespread substance abuse disorders.

6            The security is going to be very programmatic, it's  
7 going to look like an armed camp if you are going to do it in a  
8 way that is safe.

9            And we're going to recreate an environment that is the  
10 environment many veterans are trying to get away from, where  
11 they are going to be traumatized, where they are not going to  
12 feel safe, where they are going to be fearful."

13            It's difficult to read those words, Judge Carter,  
14 because we all want what is best for our veterans, but as I  
15 know this Court is aware, there are also some significant  
16 challenges, and VA has an obligation to ensure it can create  
17 the best possible environment for veterans, to provide needed  
18 services to those veterans, and to ensure their safety.

19            You have heard testimony from Dr. Braverman about the  
20 difficulty VA is having funding its police on campus.

21            But where does this leave us?

22            One of plaintiffs' claims in this lawsuit, or Count 1  
23 their *Olmstead* claim, is that essentially plaintiffs are being  
24 segregated and discriminated against not being adequately  
25 integrated -- being provided services in an adequately



1 integrated fashion.

2 And I said, once again, during my opening, I predicted  
3 that the testimony would reveal that the relief that plaintiffs  
4 are seeking would have the ironic result of actually  
5 institutionalizing the very people everyone in this courtroom  
6 wants to serve.

7 At least that's what Mr. Kuhn thinks.

8 "It smacks of re-institutionalization. We're asking  
9 4,000 people who previously would have -- under  
10 de-institutionalization, the goal is when in the past we have  
11 institutionalized people that had large number of people living  
12 on hospital grounds because, frankly, it was convenient and it  
13 let the community avoid any responsibility for them. Just pack  
14 them into these places and we can sort of forget about them.

15 We don't want to recreate that. We don't want to create  
16 what is essentially a re-institutionalized group packed into  
17 housing because it's convenient for us with the best of  
18 intentions, I understand, but that's what we will end up doing,  
19 we will be re-institutionalizing these people, instead of  
20 giving veterans an honest opportunity to live their full life  
21 integrated into the community, a part of the community, and the  
22 places they want to live."

23 A good number of veterans want to live on the campus.  
24 VA wants to provide housing for those veterans on the campus.

25 VA is working to provide housing for those veterans on

1 the campus.

2 But there are many veterans who don't want to live on  
3 the campus.

4 And VA has to meet them where they are.

5 By the way, plaintiffs' own expert, Dr. Sherin, seems to  
6 agree, at least in broad terms on this point.

7 He testified:

8 "I oftentimes think that if we put large numbers of  
9 veterans on that campus without anything else that we have a  
10 Cabrini-Green type setup which is a big, big, mistake, both for  
11 the veterans, which is obviously the key, but also for the  
12 surrounding neighborhoods."

13 You don't integrate veterans with disabilities by  
14 packing them into one location.

15 For some veterans they can really benefit and we don't  
16 dispute they can really benefit from having close access to  
17 medical services.

18 But for many others, there are alternate means of  
19 access. You have heard about telehealth, Sally Hammitt has  
20 talked about other electronic means of providing services.

21 VA has other facilities throughout Los Angeles, and  
22 throughout the Southern California area, and not every veteran  
23 needs the same level of care that is provided at Building 500.

24 Some veterans can get care -- meaningful care close to  
25 where they live and where they want to live.

1 That is the flexibility that VA needs in order to be  
2 able to meet the veterans where they are.

3 So let's talk about temporary units. That is a major  
4 part of plaintiffs' request.

5 Originally, and, again, this is before they walked back  
6 their request midway through trial. Originally they asked for  
7 1,000 temporary units; I think the Court remembers that.

8 Where did that number come from? Who knows?

9 I have been in trial for a month, I don't know where the  
10 thousand temporary unit figure came from.

11 Dr. Sherin appears to have made up the number because  
12 it's large, round, has lots of zeros, and would have a  
13 meaningful impact.

14 This is his testimony, day eight of trial:

15 "The number, I believe, in the report is 1,000, and  
16 that number is really just to signify that we need to do  
17 something robust and we need to do it quickly."

18 He didn't conduct a study identifying a need for a  
19 thousand temporary units. I'm not aware of anyone on  
20 plaintiffs' side that has conducted a study for the need for a  
21 thousand temporary units.

22 Dr. Sherin seems to think the need for a thousand  
23 temporary units is to send a signal, and he said as much.

24 "As part of forming your opinion for this case, you  
25 didn't perform any independent analysis for the demand of

1 temporary units to reach the thousand unit figure, did you?

2 "ANSWER: I haven't done any detailed analysis, no."

3 It seems to be a made-up number.

4 Before this Court considers granting relief, it needs  
5 more than just to send VA off on a billion dollar -- or maybe  
6 now it's a \$750 million endeavor, based on just signaling that  
7 VA should do something.

8 Mr. Soboroff doesn't know where the number came from.

9 "QUESTION: So do you recall testifying earlier, and  
10 I believe this is a direct quote, I don't know how that number  
11 -- referring to the 1,000 units -- was arrived at.

12 Do you recall testifying to that?

13 "ANSWER: Yeah, and I don't. It's not my job."

14 I mean, this is a number that just appears to have, like  
15 a snowball rolling down a hill, gained momentum on its own but,  
16 again, I'm not aware of where, in the record, there is any  
17 justification for this number of units.

18 So, what does the record show on this?

19 Well, VA has provided evidence. Mr. Kuhn was asked  
20 about this question. A thousand units.

21 "QUESTION: Mr. Kuhn, do you agree that there is a,  
22 quote, urgent need, end quote, to install 1,000 temporary  
23 modular units on the campus?

24 "ANSWER: Absolutely not.

25 "QUESTION: Why not?

1 "ANSWER: Well, first it would be a fantastic waste  
2 of resources. Why would we spend funds on something that is  
3 not going to solve homelessness -- these are temporary -- a  
4 thousand temporary units at that -- when we currently are  
5 running open beds with 300 units on the campus and we routinely  
6 have over 150 empty available temporary housing beds every  
7 night.

8 I would wonder what experts were consulted, who was  
9 identified as experts, who would suggest this?

10 Certainly not someone -- anyone familiar with the  
11 Housing First movement or anyone familiar with VA data.

12 The recommendation is illogical."

13 And, again, Mr. Kuhn is somebody who has dedicated his  
14 career to solving homelessness. He came to Los Angeles; he was  
15 hired by Dr. Braverman for that very task.

16 He said:

17 "I'm a huge proponent as I have shared that the  
18 first mission for us to get people off the streets. If I felt  
19 there was a need for temporary housing, we would create  
20 temporary housing.

21 There is not going to be a veteran we leave on the  
22 street for lack of capacity."

23 Again, this Court has seen Mr. Kuhn testify. I will be  
24 honest, he has said some things that are inconsistent with some  
25 of the litigation arguments that I would like to make in this

1 case.

2 He is man who speaks from his heart, and he is a man who  
3 is very candid about what he believes.

4 So when Mr. Kuhn, when John Kuhn says there's no need  
5 for temporary housing, this Court can and should give that  
6 careful, careful consideration.

7 So let's talk about plaintiffs' billion dollar, give or  
8 take, plan for the development of housing of the West Los  
9 Angeles Campus.

10 Now, originally, plaintiffs proposed 1,000 temporary  
11 units and approximately 2,800 additional permanent units, and  
12 when you add the 2,800 to 1,200 you get 4,000 permanent units.

13 They have walked back those numbers, presumably because  
14 of VA's very significant success, as reflected in the most  
15 recent PIT count numbers.

16 So I take it that plaintiffs' decision to walk back  
17 those numbers and reduce the number of temporary units that  
18 they are asking for from 1,000 to 750, and from 2,800 permanent  
19 units to 1,800 permanent units, which generally -- at least for  
20 the permanent units -- tracks the numbers and the reductions in  
21 the PIT count is at least an implicit acknowledgement on  
22 plaintiffs part that as reflected in the PIT count, VA has been  
23 very successful.

24 It also demonstrates under the Rehab Act that their  
25 initial request was unreasonable.

1           And that's one of their burdens, they have to propose a  
2 reasonable modification.

3           I will just note in the context of government resolving  
4 homelessness challenges, the Supreme Court has discussed the  
5 importance of not freezing into place a rigid mandate to  
6 develop a specific policy, because government needs wide  
7 latitude and flexibility to address and solve these types of  
8 problems.

9           This Court is familiar with this case, it's the *Grants*  
10 *Pass* case.

11           In a way, we're sort of litigating that issue here,  
12 because you have an agency that has been remarkably flexible  
13 and successful and plaintiffs would have this Court constrain  
14 the agency and its ability to try to resolve these problems.

15           But one more point: This is important.

16           Plaintiffs have an obligation to propose a reasonable  
17 modification. That's problem for them under the Rehab Act.

18           But let's just assume that we're going to go along their  
19 revised walked-back numbers of adding -- you know, trying to  
20 create a total of 3,000 permanent supportive housing units  
21 rather than 4,000, based on the most PIT count numbers.

22           That's what tracks the current PIT count numbers in Los  
23 Angeles, the total number of homeless veterans.

24           And if the PIT count numbers are accurate, plaintiffs  
25 seem to think that they are because they have modified their

1 request, although we will note that VA actually has some data  
2 that indicates that the numbers might be lower still.

3 But let's just work with the PIT count numbers of 3,000.

4 Presumably that 3,000 permanent supportive housing units  
5 would be enough to house homeless veterans, all of the homeless  
6 veterans in the Greater Los Angeles area.

7 Here is the problem, that is not their class. That is  
8 not the class that plaintiffs represent, they do not represent  
9 homeless veterans at large.

10 Their class is much smaller. Their class consists of  
11 homeless veterans who suffer from traumatic brain injury or  
12 serious mental illness.

13 That is a smaller subset of the total homeless veteran  
14 population in Los Angeles.

15 And they have not presented evidence on what the actual  
16 size of their class is.

17 That is a failure to carry their burden at this trial,  
18 and for that reason alone, this Court should deny relief under  
19 the Rehab Act.

20 But certainly, before it considers entering any sort of  
21 injunctive relief, the relief that they are requesting is far,  
22 far too broad, certainly not narrowly tailored to a specific  
23 number.

24 And we appreciate the plaintiffs have indicated that the  
25 Court could modify any relief that it enters depending upon



1 what the numbers are, although, I will just note that seems  
2 unworkable.

3 Do you start building housing based on numbers and then  
4 you stop construction as the numbers continue to drop, and if  
5 VA is able to achieve Functional Zero, what do you do with that  
6 housing then?

7 These are big investments and it needs to be based on  
8 more than just a guess as to what the size of plaintiffs' class  
9 is.

10 Now, as I said, plaintiffs have failed to carry their  
11 burden of proof on this, but there is some evidence we found in  
12 the record that supports that the number of veterans with  
13 serious mental illness is a relatively small subset of the  
14 total homeless population.

15 So what we have put on the screen is Exhibit 1335, which  
16 is PIT count data, and I will ask we turn to page 2 of that  
17 exhibit, and we have highlighted in this exhibit -- now, this  
18 is across the entire homeless population. The percentage of  
19 homeless veterans -- the percent homeless, not veterans, the  
20 entire population that suffer from serious mental illness,  
21 25 percent.

22 Another data point that we have that's specific to  
23 veterans, Dr. Harris testified to this, so we can pull up  
24 Exhibit 1223, page 9, this was an analysis of eligibility  
25 criteria and this is specific to veterans.

1 We have highlighted a chart. Serious mental illness,  
2 21 percent.

3 (Telephone interruption.)

4 MR. ROSENBERG: Let the record reflect that  
5 hopefully the real humans in this courtroom understand that my  
6 phone just went rogue on me.

7 Let me see if I can help everybody to understand. If I  
8 could use that chart over there. It's a good thing we are at  
9 the end of trial, we may need a new flip chart soon.

10 Plaintiffs --

11 THE COURT: Turn it just a little bit so counsel can  
12 see that also. I will be able to see it.

13 Thank you. Perfect.

14 MR. ROSENBERG: Plaintiffs are now proposing 750  
15 temporary units. Again, we don't know where that number comes  
16 from, but let's use the PIT count data for the number of  
17 veterans -- or the number of homeless who suffer from serious  
18 mental illness that was 25 percent.

19 So that's -- this is total population, this 188.

20 Now, if we do -- this is total.

21 For vets, 750 times 21 percent because, remember, the  
22 data that we do have shows that the incidents of serious mental  
23 illness amongst veterans is, if anything, just a little bit  
24 lower than the total population, or -- sorry, 158, 21 percent  
25 of what they are asking for is 158 temporary units.

1           Twenty-five percent of the 750 units that they are  
2 asking for is 188 units.

3           So for permanent supportive housing, they are now asking  
4 for 1,800.

5           Again, using the 25 percent for serious mental illness,  
6 1,665, and if it's for vets, using our study that is  
7 21 percent, 1,593.

8           There is no evidence that I'm aware of in the record  
9 that would support providing more than these numbers of  
10 permanent supportive housing units or temporary units to  
11 provide full relief to the actual class that plaintiffs  
12 represent.

13           By the way, though, this is still far too much, because  
14 there is evidence in the record about how not every veteran  
15 within LA, who has a serious mental illness, needs or even  
16 wants to be housed on the West LA Campus.

17           So some of this can be accommodated with tenant-based  
18 vouchers, perhaps near the campus, perhaps near other medical  
19 facilities that VA has, like at Sepulveda.

20           So this is the ceiling, but the actual number that would  
21 provide plaintiffs with the full relief they are requesting for  
22 based on the class that they represent is likely substantially  
23 smaller than these numbers.

24           That is what we're looking at. And any relief that goes  
25 beyond this would be completely unsupported by the evidence in

1 the record.

2 I will also note a pragmatic concern.

3 Remember, the environmental impact statement?

4 1,622 units are what has already been approved pursuant the  
5 environmental impact statement process.

6 If you go above that, that is going to take years.

7 I will just note these numbers fall within or pretty  
8 close to the number of permanent supportive housing units that  
9 VA can -- has basically already approved through that process.

10 But, again, the key point is their class is not all  
11 homeless veterans in Los Angeles. It is a subset.

12 They haven't offered any proof on the size of that class  
13 and the evidence that is in the record shows that it's  
14 substantially smaller than the numbers this Court has been  
15 working with.

16 So where does that leave us in terms of the actual  
17 claims in this lawsuit?

18 This is where I will more or less wrap up.

19 Because at the end of the day, I know that this Court,  
20 as it should, cares passionately about the issues surrounding  
21 homelessness. Everyone in this courtroom feels the same way.

22 As I said in my opening, it's a difference of opinion  
23 about how to get there.

24 But at the same time, just as VA is very much  
25 constrained by the statutes that create it and that bind it,

1 and I feel awkward saying this to the Court, but this Court is  
2 also constrained by the legal theories and applicable laws that  
3 it has to apply in the facts and the context of this case.

4 So Count 1, Violation of Section 504 of the  
5 Rehabilitation Act, this is their *Olmstead* claim.

6 It's their integration claim.

7 And I've already presented the argument on this just a  
8 few minutes ago.

9 It's an ironic outcome if this Court were to order VA to  
10 build large numbers of permanent supportive housing units in  
11 one location, isolating the very people that everyone in this  
12 room wants to integrate.

13 Plaintiffs haven't carried their burden of proof on this  
14 issue.

15 Plaintiffs have never shown that the campus is the most  
16 integrating setting appropriate for the class members they  
17 represent.

18 And, as Mr. Kuhn testified, it's quite the opposite. It  
19 would be a terrible idea to house that population, and  
20 regardless of what the numbers are that I put on that board,  
21 what they're seeking to do is house the entirety of that  
22 population in one location. That's the opposite of  
23 integration.

24 Count 2, this is the -- basically the AMI count. The  
25 Court has already rendered judgment on the merits.

1 As I previously indicated, we respectfully think that  
2 judgment is incorrect, but we are, of course, where we are.

3 We have presented evidence on this claim and the  
4 potential relief on this claim and we have noted that it's  
5 complex because HUD has revised its AMI rule.

6 We don't know what the full impact of that will be. We  
7 acknowledge that.

8 But generally the parties have addressed this issue,  
9 subject to what the Department of Treasury does and subject,  
10 candidly, to the impacts this might have on the developers that  
11 VA has had, and that you heard from yesterday about how they  
12 want to see housing be provided on the campus and how they are  
13 a critical part of providing housing on that campus.

14 Count 3, Violation of the Rehabilitation Act. This is  
15 plaintiffs' meaningful access claim.

16 Plaintiffs' are seeking class-wide relief, yet they have  
17 not shown through evidence that a class -- that all class  
18 members have been unable to access their disability benefits.

19 And to prevail on this claim, they have to show there is  
20 a systemic denial of meaningful access. A systemic denial.

21 They haven't shown that.

22 They also haven't proposed a reasonable modification.

23 To the contrary, the modification they proposed is, I  
24 will just say, overbroad.

25 But let's turn to the affirmative defenses, because they

1 are also critical. We think government prevails on the  
2 substance of plaintiffs' individual claims, but even if the  
3 Court finds otherwise, it would still have to find for the  
4 government under the Rehabilitation Act if it finds that we  
5 have presented adequate evidence on or affirmative defenses.

6 Those two affirmative defenses are, as the Court is  
7 aware, fundamental alteration and undue financial burden.

8 There has been four weeks of trial testimony and a lot  
9 of it goes to these issues, so let me see if I can summarize in  
10 just a couple of bullet points.

11 VA seeks to create housing options in integrated  
12 communities throughout the Greater LA area to provide choice as  
13 to where veterans live.

14 That is VA's policy.

15 Plaintiffs want to shift VA's scarce resources to a  
16 single location to house people with high needs.

17 Whether or not the Court thinks that is a good idea, we  
18 think it's a bad idea, it would be a fundamental alteration to  
19 how VA houses homeless veterans in the Greater Los Angeles  
20 area.

21 VA seeks to provide housing options that enable disabled  
22 veterans to be integrated into the broader community.

23 We have heard plenty of testimony on that. Contrary to  
24 evidence-based practices, plaintiffs would have this class be  
25 segregated from the broader community and placed just on the

1 West LA Campus.

2 Again, that is a fundamental alteration.

3 Plaintiffs would have VA shift a billion dollars, maybe  
4 it's now \$740 million, it's still a very large number, they  
5 would have VA shift that number in its budget and potentially  
6 have this Court rewrite VA's long understood legal authorities  
7 regarding the construction of housing.

8 They would change the EUL process.

9 They would change the circumstances under which VA can  
10 enter into agreements.

11 Those are all fundamental alterations.

12 They would also impose significant financial burdens.  
13 Regardless of VA's overall budget, most, if not all, of which  
14 is already accounted for for the medical services and the  
15 benefits and everything else that VA provides. That's real  
16 money and budgeting requires choices.

17 Incidentally, I wanted to just address for a moment  
18 since we're speaking about the budget and VA's authority, this  
19 issue of the use of the word "may" in the West Los Angeles  
20 Leasing Act.

21 Now, if I recall correctly I think my colleague,  
22 Mr. Knapp, addressed similar argument at the summary judgment  
23 stage.

24 But plaintiffs seem to view the language that VA may  
25 enter into Enhanced-Use Leases, the word "may," as some sort of



1 magical word that automatically unlock vast swaths of authority  
2 for VA to do all sorts of things that Congress never specified  
3 or contemplated.

4 To the contrary, Congress contemplated quite the  
5 opposite.

6 There is no legal support for that.

7 There is no basis for that legal conclusion.

8 It's inconsistent with what Congress provided.

9 And the simpler answer is when you use the word "may,"  
10 the alternative is "may not."

11 Congress, by the use of the word "may," grants VA the  
12 authority to do something if it thinks it is appropriate to do  
13 it and the agency then makes a decision about whether it's  
14 appropriate.

15 Saying that the agency may enter into EULs does not mean  
16 that the agency may do every other conceivable -- use every  
17 other conceivable method of providing housing.

18 Count 4, Breach of Fiduciary Duty.

19 We have already addressed this, this is context  
20 specific.

21 Of course, VA would like to receive more revenues and  
22 more services from the parties with which it has agreements.

23 No contracting party would feel otherwise.

24 But that doesn't mean that it's breached its fiduciary  
25 duties as a legal matter, given the circumstances that it had.

1 Plaintiffs appear to have abandoned their mandamus  
2 claim, but to the extent they have not, plaintiffs have  
3 provided no evidence or no argument that mandamus relief, which  
4 is a very specific, very narrow form of relief, is appropriate,  
5 and we don't think accounting is appropriate.

6 To be clear, we don't think any relief is appropriate in  
7 this case.

8 So where are we at the end of this trial?

9 Where VA is today is substantially different than it was  
10 a few years ago.

11 Plaintiffs have alluded to maybe it's because of the  
12 lawsuit. I don't think that is the case, but perhaps, there is  
13 correlation.

14 We have causation on our side. We have Dr. Braverman;  
15 we have Sally Hammitt; we have John Kuhn; we have the  
16 initiatives that VA has taken and that have shown real results.

17 These are real results that are reflected in the PIT  
18 counts that plaintiffs by adjusting their numbers in trial  
19 concede are meaningful.

20 So this Court has a difficult decision ahead of it, and  
21 I don't envy the Court, as it applies the law and the  
22 requirements of the law to the facts of the case.

23 And we know this, this Court takes this case very, very  
24 seriously.

25 But I can conclude with this, and I have seen some of

1 the other litigation that has taken place in this courtroom.

2 This is an area of real success.

3 Is it perfect? No.

4 I don't think we have ever claimed it's perfect, but VA  
5 has made real meaningful progress through creativity and  
6 through hard work and through diligence, and the Court can be  
7 confident of that.

8 But the Court should also be cautious.

9 Because the relief that plaintiffs are seeking in this  
10 case, which is sweeping, and also I think in many respects very  
11 ill-defined, may have the opposite effect from what everyone in  
12 this courtroom is seeking, which is to end veteran  
13 homelessness.

14 And what plaintiffs are seeking in this lawsuit, which  
15 is to provide housing for people with serious mental illness or  
16 traumatic brain injury.

17 The relief they are seeking may wind up shackling VA,  
18 robbing it of the creativity that it has used to try to resolve  
19 homelessness, as it has to make choices about, as it's forced  
20 to develop temporary housing that it does not believe to be  
21 necessary or perhaps permanent housing that's far beyond the  
22 needs that have been shown in this case.

23 What other services are cut? Where do those budgetary  
24 choices lie?

25 When John Kuhn comes up with a new creative idea to try

1 to solve this problem, will he be told: Yeah, that is a great  
2 idea, but we don't have the budget for that because  
3 unfortunately, we're having to build housing that is not  
4 necessary.

5 In light of the success that VA has had and in light of  
6 plaintiffs' failure to meet their burden, and the fact that we  
7 have met our burden on our affirmative defenses, we would urge  
8 the Court to grant judgment to the federal defendants on all of  
9 the claims that are still open as of this trial.

10 Thank you.

11 THE COURT: 15 minutes? We will be back in session  
12 in 15 minutes. Thank you, counsel.

13 (Recess.)

14 THE COURT: Back on the record. All counsel are  
15 present, the parties are present. On behalf of --

16 MR. ROSENBERG: Actually, Judge Carter, there is one  
17 thing I want to unpack on my numbers.

18 THE COURT: Your numbers on the bottom are wrong.

19 MR. ROSENBERG: No, I don't think they are wrong,  
20 it's that --

21 THE COURT: You want to reduce them?

22 MR. ROSENBERG: Well, I want --

23 THE COURT: Take .25 times eight, you wanted to show  
24 consistently with the top --

25 MR. ROSENBERG: Well, those that are already in the

1 master plan.

2 THE COURT: To match it up, you want the numbers up  
3 there.

4 MR. ROSENBERG: Well, this is the total.

5 THE COURT: Okay. I understand, counsel.

6 Do you want to correct that?

7 MR. ROSENBERG: Yeah.

8 THE COURT: Correct that for the record, that way --  
9 I understand what you are saying, but...

10 MR. ROSENBERG: So we're on the record?

11 THE COURT: We're on the record.

12 MR. ROSENBERG: This is Brad Rosenberg from the  
13 Department of Justice for the federal defendants.

14 I was just noting that the numbers that are on the chart  
15 that I prepared for permanent supportive housing, just to  
16 unpack that for a minute, it originally said 1,800 units of  
17 additional permanent supportive housing, which is what  
18 plaintiffs are now proposing, multiplied by either 25 percent  
19 or 21 percent which would yield a total of 1,665 or 1,593  
20 permanent supportive housing units.

21 But what was missing was, you take the number of  
22 additional units that plaintiffs are proposing, multiply it by  
23 the percentage, you have to add that to the 1,215 permanent  
24 supportive housing units that are already contemplated by the  
25 master plan and under construction, and that is what yields

1 your either 1,665 or 1,593 total permanent supportive housing  
2 units.

3 So the numbers that I presented were accurate, but I  
4 wanted to unpack that to make clear that you have to add the  
5 two together.

6 THE COURT: I have that in my notes already, but  
7 that clears the record for you, okay?

8 MR. ROSENBERG: Thank you.

9 THE COURT: Counsel, please.

10 MR. GUADIANA: Thank you, Your Honor.

11 Your Honor, I realize Bridgeland's issues in this case  
12 are somewhat tangential.

13 If Bridgeland's revocable license is terminated, whether  
14 Bridgeland's revocable license is terminated has little  
15 importance on the bigger issue of needing to house veterans.

16 But this doesn't mean that Bridgeland's case is not  
17 important.

18 Bridgeland's license confers a benefit on veterans that  
19 they would not otherwise have; namely, funds to cover a  
20 transportation program needed for veterans on and around the  
21 West LA VA grounds.

22 Now, we can differ and discuss whether the two and a  
23 half percent royalty is high enough, but if this Court  
24 terminates this license, then this Court will be taking away a  
25 service currently provided to veterans without conferring any

1 additional benefits on those veterans.

2 And this is where Bridgeland's license differs from all  
3 of the others that plaintiffs seeks to invalidate.

4 Take, for example, the Brentwood School lease.

5 Sure, if this Court invalidities that lease, the VA will  
6 no longer receive the annual rental payments, and in-kind  
7 services.

8 But the VA and its veterans will gain grounds for  
9 supportive housing.

10 This is the same for UCLA's lease, which, if terminated,  
11 would free up land for supportive housing. This is the same  
12 with SafetyPark.

13 Now, although the landfill issue may complicate housing  
14 on this site, but by terminating on this license and losing out  
15 on the parking lot revenues, the VA will gain valuable land for  
16 permanent supportive housing.

17 But in Bridgeland's case, if you terminate its license,  
18 veterans will lose the royalty revenue which Mr. Rainbolt  
19 testified earlier today is significantly higher for the minor  
20 subsurface right conferred than regular market rates, and  
21 veterans won't receive any replacement benefit.

22 Bridgeland's surface footprint won't change. It's drill  
23 site, as well as its expanded replacement drill site to the  
24 south, were granted to by BLM.

25 So long as the BLM leases remain in effect, Bridgeland

1 has the rights to utilize this service.

2 Terminating this license with the VA won't change that.

3 This is why Dr. Braverman testified that Bridgeland's  
4 license was not included in the licenses that the VA terminated  
5 after the OIG was issued, because why give up a resource,  
6 coming from this license, if you won't receive any other  
7 benefit by terminating it.

8 Now, yes, Bridgeland receives profits from Sawtelle 2  
9 well, which is drilled pursuant to this license.

10 THE COURT: Slow down a little bit.

11 MR. GUADIANA: It also bears all operational risk.

12 As Mr. Kulkarni testified earlier today, when oil prices  
13 go below 60 to 65 barrels -- or dollars per barrel, Bridgeland  
14 loses money.

15 But even though Bridgeland loses money, the royalty  
16 provided under the license is still paid for the VA.

17 And under this scenario, the license two and a half  
18 percent royalty, generally exceeds Bridgeland's profits.

19 Now more importantly, terminating this license does not  
20 even ensure that the Sawtelle 2's well will be plugged.

21 This is because Bridgeland and the BLM could always  
22 agree to unitize the private Sawtelle leases with the BLM  
23 lease.

24 Under that scenario, the BLM, and not veterans, would  
25 get the royalties from the Sawtelle 2 well.



1 This cannot be the result that the Court or the  
2 plaintiffs want.

3 Now, I reiterate, Bridgeland's payment may not be much  
4 money in the grand scheme of things, but it is something. And  
5 without it, transportation for veterans will suffer.

6 To be clear, canceling this license will harm veterans.

7 For these reasons, Bridgeland believes that the Court  
8 must find that its license principally benefits veterans, and  
9 on that basis, uphold the legality of license. Thank you.

10 THE COURT: Counsel.

11 Thank you. Are you prepared for rebuttal?

12 MR. ROSENBAUM: I am.

13 THE COURT: Rebuttal by the plaintiff.

14 MR. ROSENBAUM: Your Honor, I can be pretty brief,  
15 but I do want to raise a few points.

16 Let's start with the numbers.

17 Can we put on Dr. Braverman's testimony?

18 Okay. So Dr. Braverman, at page 175, said, and I'm  
19 looking at line 14, there is some questions preceding it.

20 "Look I can't tell you exactly for homeless, but among  
21 the population of veterans that we serve, approximately, some  
22 -- approximately 90 percent have some element of history of  
23 substance use disorder or mental health disorder.

24 That is a good benchmark to get started on.

25 And the master plan, please?

1 So looking at the draft master plan, Exhibit 154,  
2 page 8.

3 "Homelessness, especially homelessness among veterans,  
4 is associated with and sometimes caused by," I'm going to come  
5 back to that, "serious illness, both physical and mental.

6 A national sample of veteran users of healthcare for the  
7 homeless clinics reveal the following prevalence rates often in  
8 combination: 39.9 heart disease; depression 73 percent; PTSD,  
9 66.7 percent; anxiety disorders 73 percent; traumatic brain  
10 injury 17.5 percent."

11 Those numbers are easily in the ballpark that we're  
12 talking about.

13 Furthermore, Your Honor, the evidence from all of the  
14 witnesses in this case, has been that the experience of  
15 homelessness itself accentuates these sorts of disorders.

16 Every witness testified, the longer you are in  
17 homelessness, the more serious the disorder, the disabilities,  
18 that affects you.

19 Then this is the next sentence: "Depending on the  
20 acuity of these conditions, the stress associated with  
21 traveling to the GLA campus for treatment and therapy may be an  
22 insurmountable barrier."

23 That was courtesy of Mr. Knapp.

24 The evidence is that even the sort of situation that we  
25 prove with respect to the project-based housing, is one that

1 will contribute to individuals suffering severe mental  
2 disabilities and mental disorders.

3 We have clearly made the case that this is not something  
4 that only one in five veterans suffer.

5 This is serious business on the streets themselves.

6 Secondly, I want to talk about the issue that counsel  
7 described regarding authority.

8 Their argument -- I know there is a lot of cannons of  
9 statutory interpretation, but I have never heard one that said  
10 "may" means "shall."

11 The statute did not use "shall."

12 The very statute that we're talking about as well as its  
13 predecessor at 38 U.S.C., that statute is replete with "mays"  
14 and replete with "shalls."

15 The discussion, the term in the statute itself, about  
16 building housing for permanent supportive housing, that is a  
17 "may," it is not one of the "shalls" with respect to it.

18 I waited for counsel to describe what is the authority  
19 that says they can't do this.

20 And I'm not going repeat what I said in my opening to  
21 the Court, but the record is replete with examples of the VA  
22 building housing for all sorts of healthcare issues.

23 That is the regulation that counsel went over with  
24 Mr. Simms, when he was reviewing it.

25 So the notion that they have to be doing this or we

1 can't address the disability that is suffered here, there is  
2 absolutely no support for that whatsoever.

3           Moreover, to compound it, the argument as I heard it  
4 this afternoon, is that not only do we have to use this leasing  
5 methodology, which is responsible for the delays, which is  
6 responsible for the accentuation of the disorders themselves,  
7 it is absolutely the solution that is causing the problem in  
8 terms of getting that housing up there.

9           But now what they are saying is, where developers, to  
10 whom they outsourced this business, for which they had no  
11 necessity, whatsoever, that because they are using a method of  
12 finance, that as Your Honor found, is actually increasing -- it  
13 is actually closing off from eligibility the most seriously  
14 disabled persons.

15           But we need to keep doing that. That was the argument.  
16 We have to keep using this discriminatory method that is  
17 keeping the most disabled people out of the housing.

18           That is nonsense, Your Honor.

19           And so there is no basis for that whatsoever.

20           Mr. Simms testified, and you can use normal sorts of  
21 financing, construction financing, housing financing, to get  
22 this done.

23           Mr. Soboroff demonstrated in his examination of  
24 Mr. Simms, they can be building this like they will build every  
25 other type of housing; there is no basis for that argument

1 whatsoever.

2 Now, counsel has come in with this argument, let's just  
3 wait until Treasury does something.

4 Although, as Your Honor said, that goes in the category  
5 of aspirational winds.

6 I don't need to sue the Treasury Department.

7 Who I need to sue is the VA, because the VA is using a  
8 methodology. It is sanctioning a methodology of financing  
9 that, by its very definition, is discriminatory.

10 And the VA, as I went through the proposed order, cannot  
11 -- cannot say, we will use a methodology, a strategy, a means  
12 here, to address these disabilities that itself discriminates  
13 against the most disabled individuals.

14 The Court has got to enjoin that. That is not an  
15 acceptable one.

16 By its definition, what they are asking for is that the  
17 most seriously disabled people are going to be locked out.

18 Let me say something about what Mr. Kuhn testified to.  
19 Mr. Kuhn is a great guy, and anybody who has a team would want  
20 Mr. Kuhn to be on that team.

21 But Mr. Kuhn is an employee of the VA. He is not going  
22 to walk into this courtroom, and say: I'm the Deputy Medical  
23 Center Director and the medical center is violating federal  
24 law. That's not going to happen.

25 So, in terms of making suggestions, having ideas, being

1 a person on the ground, who is working with respect to that, he  
2 definitely should be part of the team.

3 In terms of making determinations, as to what is legal  
4 and what is not legal, that is not his expertise.

5 In that regard, I want to come back to a point that Your  
6 Honor made.

7 Let me read a list of names for Your Honor: Secretary  
8 McDonough; Mr. Merchant; Mr. McKenrick, Robert Davenport, the  
9 so-called author of this phantom theory of no authority;  
10 Secretary -- Interim Secretary Toddman; Chancellor Block;  
11 Chancellor Hunt.

12 Your Honor, those are the decision makers. Those are  
13 the decision makers.

14 These are mid-level, some excellent subordinates, who  
15 are carrying out the policies, but they are the ones who  
16 should have been in this courtroom to answer the questions in  
17 terms of the so-called justifications for these particular  
18 sorts of policies.

19 And in that regard, I have to say two things:

20 One is that counsel, three times used the phrase "hard  
21 to reach." These are hard to reach individuals with  
22 disabilities, hard to reach homeless individuals.

23 Your Honor, there is no evidence in this record from  
24 government that these individuals are hard to reach.

25 The evidence is that they are not reaching.

1           The evidence was that even when they were on the door  
2 step at San Vicente, they were left out there, left out there  
3 to have their conditions worsen.

4           I went through the pathetic numbers on the  
5 organizational chart with respect to outreach, and counsel  
6 didn't talk about that.

7           The reason counsel didn't talk about that is because  
8 there is no outreach with respect to this program.

9           Those individuals are languishing on the streets and  
10 they have no outreach to deal with.

11           Now, what counsel does, is says it shifts over to the  
12 One Team approach.

13           Well, look, the One Team approach is not a substitute,  
14 it is not a substitute for an aggressive meaningful outreach  
15 sort of program.

16           If the government -- if the VA wants to talk to other  
17 agencies, great.

18           If it wants to gain assistance from them, great.

19           But they cannot outsource what is a basic  
20 responsibility, and that is to find, identify, and bring in.

21           This isn't about vets showing up at the door step of the  
22 West LA Campus and saying, we need help.

23           No. It's about going three blocks from here and finding  
24 them.

25           It's about going to every encampment and finding them,

1 and they don't have the methodology to do it.

2 Again, just like what the other points I have been  
3 pointing out, what wasn't shown is as important as what was  
4 shown.

5 The evidence from Dr. Sherin, the evidence from Kuhn,  
6 Braverman, the evidence from Harris, was that what works is to  
7 have peers out there, vets who know how to talk to vets, vets  
8 who understand where they are at.

9 And the evidence is that this One Team approach, fine,  
10 put it on, icing on a cake that doesn't exist.

11 But the evidence is that that -- we don't have any  
12 evidence that any of these other entities are using veteran  
13 peers.

14 When they talk about Rob Reynolds, who is effective,  
15 look, Rob is a great guy, Rob is very smart, but the first  
16 thing about it, he's a veteran, and vets listen to vets, and  
17 vets respond to vets.

18 And there is no evidence whatsoever in the record that  
19 there is anything like that in terms of the individuals.

20 Now, I want to talk about who are going out there.

21 I want to talk about the CTRS, as if that was a great  
22 innovation.

23 The CTRS is a tragedy. The CTRS, as every witness who  
24 talked about, is not housing, it's the best they can do. That  
25 is all that is there.



1 Kuhn testified it's not temporary supportive housing,  
2 it's not permanent supportive housing, it's not housing.

3 It's just a shed you put someone in, and am I surprised  
4 that Josh Petitt said, it's better than living on the ground,  
5 of course not, who wouldn't.

6 But the fact is that is not a substitute for it.

7 And what was really interesting about the presentation  
8 that was just made, is that there was no recognition that they  
9 don't have what they need in terms of getting individuals  
10 housed.

11 That number stuff is baloney. The number stuff, Your  
12 Honor, to start with, first of all, as I said there are serious  
13 -- individuals with serious mental illness, and the percentages  
14 are much higher than what they are talking about.

15 But where did our numbers come from?

16 Our numbers came from the fact, as Simms testified, in  
17 all five counties, counting all of the housing they have got,  
18 even those sheds.

19 They have got 379 available spots, and if there are  
20 3,000 individuals out there on the streets, then 379 available  
21 beds is not going to get that job done.

22 Let me say, also, with respect to the notion that we are  
23 one-size-fits-all, just deal with the grounds themselves.

24 I want say two or three things about that.

25 First, Your Honor, with respect to the grounds, those

1 grounds, 388 acres, those grounds are not being utilized to the  
2 extent that the fiduciary duty requires that was proven. There  
3 is no evidence that that wasn't in fact the case.

4 That's what we were talking about.

5 There is plenty of room on those grounds for the  
6 temporary supportive housing that is required.

7 My God, if the evidence said anything, it said people  
8 need to get off the streets now, and if they come to the  
9 campus, they are not going to find anything.

10 What are they going to do? Bring in more sheds?

11 There is absolutely no housing, that is why it's  
12 temporary, but this is temporary supportive housing.

13 It looks like real housing.

14 Dr. Braverman's neighbors have housing like this.

15 This has dignity, it has privacy, and it has the  
16 elements of it, it's the only way that people can heal.

17 Now, he makes the argument that, well, this is going to  
18 turn into some sort of asylum.

19 No, it's not going to turn into asylum for people on the  
20 streets for people who need housing.

21 This will get the job done.

22 But as Your Honor pointed out, if there are additional  
23 units, that is the strategy of integration, and their own  
24 Housing First theory says that's what should be done.

25 Because Housing First is about all individuals who are

1 on the streets, and you can bring those individuals in.

2 As Your Honor pointed out, you can bring staff in and  
3 put those individuals in.

4 I didn't hear counsel say anything about community.

5 I didn't hear counsel say one thing about community.

6 You walked that campus. Where is the community?

7 It's not there.

8 There is a community of people. There is not a  
9 community of structures.

10 When any of us go home tonight, we are going to go home  
11 to a community, but Skid Row is not a community, and that  
12 campus is not a community.

13 And they are every day violating what the master plan  
14 said should have been taken care of long ago. They have got no  
15 plan for it, and the Court has to order it.

16 Let me talk -- and, of course, people can have choice,  
17 but damn it, a choice is not a shed.

18 If you want to get -- nobody is going to choose a shed.

19 If you want to give people choice, give people real  
20 choices; they deserve that.

21 They deserve an opportunity to live, whether it's in a  
22 project-based, whether it's in a tenant-based, whether it's on  
23 the grounds, but they deserve an opportunity to live in  
24 housing, not in a shed.

25 And what we're talking about, Your Honor, I didn't say

1 just one, grounds; we didn't say anything close to that.

2 What we said is every part of this system is screwed up.

3 The tenant-based system can't get referrals.

4 If the referrals don't even permit re-issuance of  
5 vouchers, it's a failure.

6 The project-based or the temporary-based, Your Honor, I  
7 understand that Laurieann and Lavon are counted as housed.

8 When they tout their statistics, that is fine, when they  
9 tout their statistics, they count as housed, but they are not  
10 housed in any way that the Housing First policy or any system  
11 that is sensitive to what being unhoused is about.

12 Where is the evidence?

13 Where is the evidence?

14 Where is the evidence that the project-based programs  
15 that they have, that is as far-flung as Lancaster, as far-flung  
16 as Templeton, along a corridor with the lowest income  
17 communities.

18 Where is the evidence that that's where people want to  
19 live?

20 Where they can't be with a community of veterans.

21 Where they can't have transportation.

22 And in that regard, that is what has got to be fixed.

23 We're not saying just focus on the grounds, we're saying  
24 fix it all.

25 If you want to have choices, make them real choices; the

1 choices that you and I might make if we had to be on the  
2 street.

3 And what is their explanation for Laurieann? Laurieann,  
4 as Dr. Harris pointed out, is in Lancaster.

5 Do you think she wants to be in Lancaster?

6 Do you think she wants to be isolated?

7 Do you think Mr. Johnson wants to be suicidal in a room  
8 without other people around?

9 All we're saying if you are going to do it, do it right.

10 Use your evidence-based systems to make this work.

11 We would be pleased to have that.

12 Where do our numbers come from? Our numbers came from  
13 the 379 beds; they come from the 3,000 unhoused, but the fail  
14 safe is, one of the points of the order that I read to you, the  
15 proposed order, as to both temporary and permanent supporting  
16 housing units, the Court retains jurisdiction to adjust the  
17 number of units in each category in order to closely  
18 approximate the actual need for housing as reflected by one or  
19 more counts of homeless veterans in the catchment area.

20 We're not building legos. We're building houses for  
21 real people.

22 If the numbers say you need less, fine, if the numbers  
23 say you need more, then you have got to get more.

24 The problem is they don't have the capacity and they  
25 haven't done it.

1           That's because the people who are not in this courtroom  
2 are the people who are making decisions.

3           And let me say something about money.

4           Counsel said over and over again, where are we going to  
5 get this money, where is it going to come from?

6           That is counsel's statement, but there is no evidence in  
7 this record that the United States government, where every  
8 president has said, I'm going to end homelessness, with a \$407  
9 billion budget, there is no evidence in the record that this VA  
10 cannot afford it.

11           If they can't, then go to Congress.

12           But there is not a shred of evidence in this record,  
13 that they are somehow financially strapped.

14           They ought to put that one in a headline. "VA  
15 financially strapped, cannot house our veterans."

16           You haven't seen that.

17           Nobody came into this courtroom to say that. Mr. Kuhn  
18 didn't say that. Sally Hammitt didn't say that. None of their  
19 experts said anything close to it.

20           Let me turn to the business of leases, and I want to say  
21 a few things about that.

22           One, is their argument -- their argument is a whopper.  
23 Their argument is that even where the lease violates the law,  
24 we have got to stick with it, because we're getting some money.

25           They don't put on evidence that the lease in fact

1 satisfy the law.

2 The first rule of a fiduciary duty is follow the law.

3 And what they are arguing for is that they can violate  
4 that law.

5 The West LA Leasing Act couldn't be clearer.

6 It couldn't be clearer, and he didn't defend it as in  
7 conformity with the statute.

8 The statute says you have to -- the prevailing -- what  
9 is the word -- the predominant focus with UCLA -- the principal  
10 benefit, there you go, we're a great team. The principal  
11 benefit of the activities on the grounds has to be for veterans  
12 and their families.

13 Their argument has zero limiting principle.

14 Their argument is as long as they are paying us some  
15 money, as long as they can go at 5:00 a.m. to gym, that is  
16 fine.

17 There was no evidence -- no evidence whatsoever that the  
18 predominant -- what is wrong with me -- that that statute was  
19 in fact complied with.

20 And that is the first rule of fiduciary duty, and this  
21 Court is being asked to do nothing more than to say that has  
22 got to be applied here.

23 Their argument, even about, well, we don't have any  
24 money, we need the leasing money.

25 I almost put this up on the chart.

1           When we were questioning them, they had this chart as to  
2 what they do with the leasing money.

3           And the reality is they don't have any leasing money  
4 left.

5           One of the leasing items was \$5 million under the topic  
6 "restitution."

7           When I asked what restitution meant was, it's because  
8 one of their employees, who went to prison, defrauded  
9 government, and now they are using that money to pay it back.

10          The veterans got screwed both ways.

11          First, they got screwed when they got defrauded, and  
12 then they got screwed, because now the money that is coming in,  
13 some five million dollars, I think it was 5/13th of the total  
14 amount is going there.

15          But, Your Honor, the statute cannot be clearer, you  
16 judge what they are doing by the statute itself, by the  
17 standards itself.

18          Their argument is -- the argument by Bridgeland as well,  
19 we're giving you some money, take it and run, keep it. That is  
20 not the test.

21          That is not the test.

22          The test is are you in fact doing this.

23          Giving veterans 5:00 a.m. in the morning to go to a  
24 lacrosse field is not satisfactory, even if one veteran in fact  
25 did that.



1 That is what they want from you.

2 They want a pass as to how this in fact can take place.

3 One thing about the leases in this situation -- but the  
4 APA, I want to say, counsel is wrong about this.

5 We are asking, I agree, for a finding that these leases  
6 or these land use agreements were in violation of the statute.

7 We are also saying that even under the APA, part of the  
8 value here of the testimony that came in, is that we get a  
9 sense of what that record was all about.

10 Frankly, Your Honor, the record from Brentwood and  
11 others were garbage.

12 The record was just a couple of pieces of paper,  
13 including the lease itself. It nowhere sustained it.

14 But the evidence in this case was so powerful, it was so  
15 compelling, because it showed that from the very beginning,  
16 that lease should never have been entered into.

17 And, my God, the evidence is undisputed, absolutely  
18 undisputed that what the gentleman said today, the fat hog man,  
19 this is fattest hog on the planet in terms of the way those  
20 leases were drafted.

21 Government is getting pennies on the dollar in terms of  
22 what they should be.

23 How valuable is this to the Brentwood? How valuable is  
24 this to UCLA?

25 It's so valuable that they couldn't even find a

1 substitute for it.

2 The amount of money that Brentwood pays in rent, 15 of  
3 their students' tuition would take care of that.

4 And the OIG found that it was over a million dollars  
5 less than it should have been.

6 Well, their argument is something is coming in, put it  
7 in the bank, that sounds good, at least they have got  
8 something, particularly, where they don't make any record  
9 itself.

10 Now, their argument is, well, the veterans can sue, the  
11 veterans can bring litigation, but you should deny their  
12 litigation.

13 But as Your Honor put in the motion to dismiss, if  
14 Brentwood sues -- if Brentwood sues, it's the dumbest damn suit  
15 in the history of the country.

16 Because the OIG has found them twice to be in violation  
17 of it, and they have got no grounds to complain, because they  
18 are not even coming close to satisfying what the statute is,  
19 but still their arguments is, whoa, we don't want to have to  
20 deal with litigation from Brentwood or UCLA, but bring on the  
21 vets, those, we can say no to.

22 One other thing about the reasonable -- so-called  
23 reasonable accommodation.

24 The way -- counsel is right. We did move the numbers.

25 We did move the numbers and we moved some of the

1 locations too, because that's the way the world works.

2 Nobody expected landfill issues to come in, just, can  
3 you just it done.

4 Nobody -- the historical stuff, as I said Your Honor,  
5 among the many ironies in case, I don't know, but a candidate  
6 for No. 1 is that their concern about the historical nature of  
7 that campus and that chapel is a disgrace.

8 That campus demonstrates this is an opportunistic  
9 argument, but there is no evidence in this record that the  
10 historical or the money or the authority is blocking their way.

11 My very last point.

12 Counsel mentioned the *Grants Pass* case.

13 The *Grants Pass* case, I am very familiar with. I argued  
14 the *Jones* case, which was the foundation for the *Boise* case  
15 which was the foundation for the *Grants Pass* case.

16 That argument, which lost, in *Grants Pass*, was that the  
17 Eighth Amendment was not violated, lost it there.

18 That is not the situation here.

19 This is not about a government that is free to  
20 experiment.

21 This is a right. This is right that these veterans own,  
22 based on the fiduciary duty, and based on the Rehabilitation  
23 Act.

24 That is their right, that changes the equities. That  
25 changes the story, because they don't have time to experiment

1 with something like that. They have a right to be vindicated.

2 Even if they did have space to experiment, time is up.

3 Time is up.

4 *Valentini* was 2011.

5 They have had plenty of time to experiment.

6 I'm sure they have got other experiments on the books.

7 I'm sure some of them are fine.

8 The reality is we need an a plan, we need an execution  
9 that will get this done.

10 We just can't say, we're just making progress, because  
11 these are people's lives, and those lives are going to be gone  
12 while progress is being made.

13 The business is to address it now.

14 The government has the authority. It has the capacity.  
15 What it needs is the will to make it done.

16 And that's the reason we built courthouses, and that's  
17 the reason the Court should grant the relief we're seeking.

18 Thank you very much.

19 THE COURT: Counsel. This is where I'm going to  
20 conduct -- I see you standing.

21 MR. ROSENBERG: May I be heard?

22 THE COURT: Just a moment.

23 My guess, just a moment, my guess you want to have a  
24 little bit rebuttal?

25 MR. ROSENBERG: Very short.

1 THE COURT: Hold on. If I grant that, here is my  
2 limitation.

3 I know that when I was practicing when dinosaurs roamed  
4 the face of the earth, that if I would have just told the jury  
5 I was in front of -- it usually was death penalty work at the  
6 time -- one more thing, I would win that case.

7 I hit the elevator door, I said, my God, I forgot  
8 something I really had to say.

9 And here you have got a trier of fact, who is a judge.  
10 You two talk to each other, but this is one more thing. In  
11 other words, it's one more thing that judge didn't hear me, and  
12 I want to tell him again, or I want one more thing on rebuttal  
13 and you have got two minutes each, and that's it.

14 So talk to your side for a moment, talk to your side for  
15 a moment. You keep track of it, because in two minutes they  
16 are done.

17 One more thing.

18 And while you are doing that, you have got time, folks,  
19 so listen very carefully.

20 I have pushed back the patent case. I won't be elected  
21 patent judge of the year, but I pushed back the patent case a  
22 week for you.

23 I have got a little bit -- a few disgruntled patent  
24 attorneys.

25 I start tomorrow, either writing or thinking, now we

1 have got this compilation together.

2 Sunday, I will be working too, right, team? So are  
3 they.

4 Guess what, Monday, I will be working.

5 I know you have got to get on a plane, I don't want to  
6 disadvantage you, but you don't want a judge to get ahead of  
7 you in terms of your findings in fact and conclusions of law.

8 But I can't wait now. You are the only case that I need  
9 to pay attention to, so I'm putting the other cases, so  
10 sequentially, I'm paying attention to you until I write.

11 Here is what I have got to do. I have got to write, I  
12 have got to look at it. I have got to get up and see what I  
13 wrote, walk around the table five times and see, how does that  
14 feel?

15 When will you have the decision? The earliest you will  
16 have the decision is Thursday next week.

17 The latest is Monday the following week, if I need a  
18 weekend to reflect, that is not my time period.

19 You get those findings of fact and conclusions of law to  
20 me this weekend, because your drop-dead date on those are  
21 Wednesday at 9 o'clock DC time; that's it.

22 Am I clear?

23 Now, up until that time, you can modify, but I'm working  
24 off your findings of fact and conclusions of law you gave to  
25 me, so, get those to me. If you get them to me this weekend,

1 that is fine, I will be there.

2 Now, I won't docket them, they will come into chambers,  
3 so Kerlan, you arrange the law clerks and I receive that.

4 All right. Now, you consult, you have got two minutes  
5 on each side.

6 This is not wholesale rebuttal now.

7 This is "the last thing" when I hit the elevator door  
8 and where I used to have pit in my stomach, my gosh, if I would  
9 have told that jury one more thing.

10 Now, the burden is on the plaintiffs, so I'm going to  
11 reverse this now.

12 You normally have the last word, so this time, if I'm  
13 granting this, the defendants argue first, so the burden is not  
14 reversed, because you have the last word, either by a quick  
15 rebuttal to their point or the one more thing you wanted me to  
16 hear or reemphasize.

17 On behalf of the defendants, two minutes.

18 MR. ROSENBERG: It will be less than that.

19 Before I get to that, Your Honor, I do have an update on  
20 the post findings of fact.

21 We actually anticipate being able to file that today.

22 THE COURT: That's terrific. Thank you.

23 How about you folks?

24 MR. DU: We filed those already.

25 THE COURT: Those are the final?

1 MR. DU: Yes.

2 THE COURT: Then we will pull them off tonight.

3 MR. ROSENBERG: We have not filed it yet. I  
4 anticipate shortly we will file it.

5 THE COURT: All of you folks go home. And I will  
6 pull them out.

7 THE COURTROOM DEPUTY: I have plaintiffs.

8 THE COURT: I will take another look tonight, but I  
9 won't look at them until tomorrow for both sides.

10 MR. ROSENBERG: I really just have a couple of brief  
11 points.

12 First of all, on the evidentiary issues, we recall it is  
13 plaintiffs' burden of proof, so other than the affirmative  
14 defenses, we have the burden of proof in the affirmative  
15 defenses, but they have the burden to prevail here.

16 The percentages of homeless veterans with serious mental  
17 illness or traumatic brain injury, they have not provided any  
18 evidence of that as part of their case in chief.

19 They didn't say anything about it, until I have raised  
20 it in the closing.

21 As for Dr. Braverman's testimony on it, which was a  
22 passing comment, it was, first of all, regarding the number of  
23 people who are in the VA system generally, not homeless  
24 veterans.

25 THE COURT: Just a moment. Would you double-check,



1 I do recall these figures in my notes.

2 This was raised in terms of the percentages with the  
3 Court.

4 MR. ROSENBERG: I took a snapshot of what showed up  
5 on the screen when they showed the exhibit. They could bring  
6 it up, perhaps, but it says:

7 "ANSWER: I think that number is for the people who  
8 are getting care in the VA. I can't speak to all homeless  
9 veterans. Even if you set that aside, he says, among the  
10 population of veterans we serve, approximately 90 percent have  
11 some element of history of substance use disorder or mental  
12 health disorder.

13 That is disjunctive. It could be 80 percent substance  
14 use disorder, and 10 percent mental health disorder.

15 That is not sufficient evidence. It's also a passing  
16 comment, and it's telling that plaintiffs, in their rebuttal,  
17 said that these numbers are in the ballpark.

18 Before they would have this Court order VA to engage in  
19 a billion dollar enterprise, they need more than a ballpark.

20 They need specific numbers; that is their burden.

21 THE COURT: Counsel, thank you. On behalf of  
22 Bridgeland?

23 MR. GUADIANA: Nothing, Your Honor.

24 THE COURT: On behalf of the plaintiffs?

25 MR. ROSENBAUM: No. Your Honor, thank you and your

1 team for this.

2 THE COURT: You will hear from me anywhere from five  
3 to seven days, or five to nine days, in case I need that  
4 weekend.

5 Thank you very much. We are in recess.

6 If you would be so kind just to take the boxes out,  
7 okay?

8 Thank you very much.

9  
10 (The proceedings concluded at 5:32 p.m.)

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**CERTIFICATE OF OFFICIAL REPORTER**

COUNTY OF LOS ANGELES )  
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I, TERRI A. HOURIGAN, Federal Official Realtime Court Reporter, in and for the United States District Court for the Central District of California, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the judicial conference of the United States.

Date: 31st day of August, 2024.

/s/ TERRI A. HOURIGAN

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TERRI A. HOURIGAN, CSR NO. 3838, RPR, CRR  
Federal Court Reporter

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