

Nos. 24-6338 & 24-6603
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JEFFREY POWERS, et al.,

Plaintiffs,

v.

DENIS RICHARD MCDONOUGH, et al.,

Defendants.

Appeal from the Central District of California,

Case No. 2:22-cv-08357, Hon. David O. Carter

THE REGENTS' APPELLANT'S OPENING BRIEF

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INTRODUCTION

For decades, The Regents of the University of California’s Los Angeles campus (“UCLA” or the “University”) has enjoyed a beneficial partnership with the Veteran’s Administration (“VA”), in which UCLA has provided extensive world-class medical care to Veterans at the West Los Angeles Veterans Administration Campus (“VA Campus”). Since the early 1960s, this relationship has included a lease by UCLA of a ten-acre parcel on the 387-acre VA Campus that UCLA’s baseball team has used to play games, train and practice. During closing argument at a trial below between VA and Plaintiffs—in which UCLA was not a party—the district court granted Plaintiffs’ oral request to amend their pleading to add a new claim that UCLA’s lease violated a statute (the “2016 Leasing Act”). In UCLA’s absence, and without any service of the new oral closing argument claim on UCLA, the district court declared the lease void, then summarily enjoined UCLA from using the leased premises. When a stunned UCLA appeared in court to try to salvage its leasehold, the district court denied UCLA’s motion to intervene.

The University appealed from the judgment voiding its lease and the judgment’s incorporated injunction prohibiting UCLA from using the leased land, and from the order denying its motion to intervene. This Court consolidated and expedited the University’s appeals with VA’s appeal from the same judgment, granted VA’s motion for a stay of that

judgment pending its appeal, and deferred to the merits panel the University's motion for a stay pending appeal of the injunction that restrains UCLA's use of its leasehold.

As the University demonstrates below, every order the district court made pertaining to the University's lease is reversibly erroneous, unconstitutional and/or a misinterpretation of the 2016 Leasing Act:

(a) The court violated due process and the Federal Rules of Civil Procedure in voiding the University's lease based on a new claim made orally in closing argument at a trial at which the University was not a party, which claim was never even served on the University, much less with an opportunity to respond and defend against the claim;

(b) The due process and rules violation deepened and the district court independently erred when it did not allow the University to intervene post-trial—even though the University was responding to a brand-new claim made orally in closing argument at a trial at which it was not present, and even though the new claim had resulted in a summary termination of the University's long-term lease;

(c) In the University's absence from the trial, the district court misread the 2016 Leasing Act, which expressly authorized the University's lease, and the court erroneously usurped the authority that

Congress expressly delegated to the Secretary of Veteran Affairs in that Act; and

(d) The district court independently erred in leaping from the conclusion (itself erroneous) that the University's lease did not comply with the 2016 Leasing Act to a voiding of that lease and a summary eviction—even if the lease did not comply with the Act, the court was obliged to remand to the agency authorized to enter the lease (VA) to cure the violation; lease voiding and summary eviction were improper.

For those same reasons and those stated in the University's motion for a stay pending appeal, the injunction should be stayed pending appeal to prevent further impairment of UCLA's right to quiet enjoyment of its leasehold while this Court reviews this highly unusual and improper summary termination of a lease.

The United States Supreme Court has held that it violates due process and the Federal Rules of Civil Procedure to permit a party to add a new claim involving a party not before the court without formal written service of the new claim on the absent party, and without giving that absent party an opportunity to respond and defend the claim. *See Nelson v. Adams USA, Inc.*, 529 U.S. 460, 466-67 (2000) (discussed in section II.A., below). The proceedings below illustrate how such a due process violation adversely impacts the reliability of adjudication.

Plaintiffs' failure to make a claim against the University's lease in their pleading, and their belated injection of an oral claim during closing argument at the trial below, resulted in the University not appearing at that trial and not presenting legal argument and evidence that would have demonstrated its lease complied with the 2016 Leasing Act. In that Act, Congress authorized that lease, knowing that UCLA intended to use the ten-acre parcel for its baseball team, on terms uniquely applicable to that lease alone. UCLA has not only met, but exceeded, all the statutory requirements. Yet, in UCLA's absence, Plaintiffs erroneously conflated other provisions in the 2016 Leasing Act that are not applicable to the University's lease with the Act's terms that expressly applied to the University alone. The district court's orders likewise conflated the applicable provisions and misinterpreted the Act.

The University's absence from the trial also resulted in judicial inattention to record evidence that showed the lease satisfied the 2016 Leasing Act, and in the omission from the record of other evidence that would have further made that showing. If the University had been joined in the action and had an opportunity to present such evidence, it would have *easily* demonstrated its compliance with the Act.

Because the interpretation of the 2016 Leasing Act is a question of law, and the Act expressly authorizes the University's lease, this Court's reversal should include directions to restore the University to its lease,

leaving as the sole issue the remedies necessary to make it whole for the unlawful deprivation of its property interest. That ruling would eliminate the need for this Court to reach the order denying the University's motion to intervene. If this Court reaches that issue, it should reverse the intervention denial order as well.

This Court should issue the same directions if it reverses on the ground that the district court violated due process and/or the Federal Rules of Civil Procedure in allowing the oral closing argument request to amend the pleading to add a claim against the University's lease. Because the district court should never have entertained that request at all, this Court should reverse with directions to restore the University to its lease, and to provide any remedies appropriate to restore the University to the position it would have enjoyed had the improper claim never been belatedly injected during the closing argument below.

JURISDICTIONAL STATEMENT

The district court had jurisdiction over Plaintiffs' claims against VA pursuant to 28 U.S.C. §§ 1331, 1361 and 1367. This Court has jurisdiction over this appeal under 28 U.S.C. § 1291. The University filed its timely notice of appeal from the district court's October 11, 2024, Final Judgment and Permanent Injunction on October 15, 2024, and its timely

notice of appeal from the district court's October 23, 2024 order denying the University's motion to intervene on October 28, 2024.

STATEMENT OF ISSUES PRESENTED

This appeal from the district court's Final Judgment and Permanent Injunction and order denying the University's motion to intervene presents the following issues for the Court to decide:

1. Does the University have standing to appeal from the Final Judgment and Permanent Injunction declaring the University's lease void and barring the University from its leasehold on the VA Campus?

2. Did due process and the Federal Rules of Civil Procedure require the district court to join the University as party, and provide it an opportunity to be heard, before it declared the University's lease to be void and barred the University from its leasehold?

3. Did the district court commit legal error in misinterpreting the 2016 Leasing Act when it voided the University's lease?

4. Did the district court abuse its discretion in denying the University's motion to intervene after it granted Plaintiffs' oral motion, made during closing argument, to add claims related to the lease?

5. What remedies will restore the University to the position it enjoyed before the reversible errors determined in these appeals?

STATEMENT OF THE CASE

I. Factual Background

A. UCLA's Long-Standing Relationship With VA Campus

The University, through UCLA, has a deep and long-standing service relationship with the VA Campus. The UCLA Health System and Medical School have established programs with the VA Hospital at the VA Campus through which Veterans receive health care from world-class physicians and medical students at little to no cost. (3-ER-528 at ¶¶ 12-13). Veterans also receive care from students at the UCLA School of Dentistry, UCLA School of Nursing, and UCLA Department of Social Work. (3-ER-529 at ¶¶ 14-16).

In the early 1960s, the VA Campus included a baseball field, then known as VA Sawtelle Baseball Field. Since 1963, UCLA has leased a ten-acre parcel on the VA Campus, that included the baseball field, as a facility for the use of the UCLA baseball team. In 1981, UCLA constructed Jackie Robinson Stadium, a baseball facility that it named after one of its most famous former students and Veterans.¹ Since then, UCLA's baseball team has played its home games at the stadium, and the team trains and holds its meetings and recruitment events in the associated facilities. (See 3-ER-570-72 at ¶¶ 3-9, 13-14).

¹ References to Jackie Robinson Stadium and "the stadium" herein generally refer to the stadium and associated facilities where the team trains and holds meetings and recruiting events.

B. In 2016, After The *Valentini* Litigation, VA Develops A Draft Master Plan For The West LA VA Campus

In 2011, a different group of Veterans sued VA in *Valentini v. Shinseki*, Central District of California, Case No. CV 11-04846. That case settled while on appeal, with VA and the *Valentini* plaintiffs agreeing to work on a “New Master Plan” for the VA Campus. On January 28, 2016, VA issued its Draft Master Plan (“2016 Draft Master Plan”), which proposed a framework for adding 1,200 units of permanent supportive housing and providing service enhancements, which were to “be delivered in partnership with VA’s academic affiliates, including UCLA, and other VA partners who have expertise in caring for homeless and other vulnerable Veteran populations.” (9-ER-1922). The Draft Master Plan further stated the “preferred use” of the three lots comprising the UCLA baseball facilities would be the continued use of that space as a baseball stadium (although supportive housing would be a permissible alternative use). (9-ER-2059).

C. Congress Enacts The 2016 Leasing Act And Allows UCLA To Continue Using Jackie Robinson Stadium

Shortly after VA issued its 2016 Draft Master Plan, Congress passed the 2016 Leasing Act. *See* West Los Angeles Leasing Act of 2016, Pub. L. No. 114-226, 130 Stat. 926 (2016). That Act authorized VA to lease land to the University, on terms uniquely applicable to the University, as distinct from other lessees. *Id.* § 2(b)(3).

The Act's subsection (b)(3) states that a permissible lease is:

A lease of real property for a term not to exceed 10 years to The Regents of the University of California, a corporation organized under the laws of the State of California, on behalf of its University of California, Los Angeles (UCLA) campus (hereinafter in this section referred to as "The Regents"), if—

(A) the lease is consistent with the master plan described in subsection (g);

(B) the provision of services to veterans is the predominant focus of the activities of The Regents at the Campus during the term of the lease;

(C) The Regents expressly agrees to provide, during the term of the lease and to an extent and in a manner that the Secretary considers appropriate, additional services and support (for which The Regents is not compensated by the Secretary or through an existing medical affiliation agreement) that—

(i) principally benefit veterans and their families, including veterans that are severely disabled, women, aging, or homeless; and

(ii) may consist of activities relating to the medical clinical, therapeutic, dietary, rehabilitative, legal, mental, spiritual, physical, recreational, research, and counseling needs of veterans and their families or any of the purposes specified in any of subparagraphs (A) through (I) of paragraph (2); and

(D) The Regents maintains records documenting the value of the additional services and support that The Regents provides pursuant to subparagraph (C) for the duration of the lease and makes such records available to the Secretary.

See Pub. L. No. 114-226, § 2(b)(3).

This statutory text demonstrates Congress was aware of the long partnership between UCLA and Veterans, and expressly authorized UCLA's lease and baseball stadium use so long as UCLA continued to provide world-class medical care at the Campus and added in-kind services to an extent to be determined by the VA Secretary.

First, the lease must be consistent with the Master Plan, which, as noted, contemplates continued use of the University's leasehold for baseball. (9-ER-2059). Second, "the predominant focus" requirement expressly is based upon the University's activities "at the Campus"—i.e., on all 387 acres at the VA Campus (not just the 10-acre parcel that UCLA leases). Third, the express references to uncompensated services and, separately, to the then-existing compensated medical affiliation agreements in describing the additional in-kind services that UCLA would provide² reflects that Congress intended the compensated provision of medical care to be part of the "activities" that would satisfy the predominant focus test. Fourth, the reference "to an extent and in a manner that the Secretary considers appropriate" specifies that the amount of additional *pro bono* services that UCLA would be required to

² See Pub. L. No. 114-226, § 2(b)(3)(C) (the University agrees to provide "additional services and support (for which The Regents is not compensated by the Secretary or through an existing medical affiliation agreement)" (emphasis added)).

provide was committed to the Secretary's discretion—it is not what plaintiff-litigants or the district court, second-guessing in hindsight, believes the extent of such services should be.

The legislative history is in accord. For example, a proponent of the legislation, VA's Dr. Thomas Lynch, stated the "legislation would also enable VA to work with state entities such as the University of California, Los Angeles, to obtain improved services for Veterans, over and above the range of benefits generated from the current VA-UCLA medical affiliation arrangement. This effort is in line with VA's goal to foster and improve its medical affiliations nationwide, to help ensure that sufficient quality and quantity of doctors, nurses, and research are available, to help ensure that Veterans will receive improved care and services well into the 21st Century and beyond." S. Comm. on Veterans' Affairs, Pending Health Care And Benefits Legislation, S. Hrg. 114-242 at 10 (Oct. 6, 2015).

D. VA And The University Enter Into A Lease; VA OIG Repeatedly Finds The University's Lease To Be Compliant With The 2016 Leasing Act

Consistent with subsection (b)(3) of the 2016 Leasing Act and the 2016 Draft Master Plan, VA and the University entered a ten-year lease in December 2016, with an option for the University to extend the lease for ten more years. (3-ER-524 at ¶ 3). Under that lease, the University leases the ten-acre parcel and, in return, pays VA \$300,000 in annual

rent and has committed to providing a minimum annual average of \$1,350,000 of pro bono in-kind services to Veterans. (9-ER-2122-23).

VA OIG has conducted two audits of the VA Campus and twice found that while other VA leases are inconsistent with the 2016 Leasing Act: (i) the University's lease complies with the 2016 Leasing Act; and (ii) the value of the in-kind services the University has provided exceeds what it is required to provide. (8-ER-1746-64, 8-ER-2152). Both the 2018 VA OIG Report and the 2021 VA OIG Report found the lease compliant, with the 2021 report concluding that "the provision of services to Veterans is the predominant focus" of the University's activities on the VA Campus. (8-ER-1870). VA OIG's findings that the University's lease is compliant with the Leasing Act contrasts with its findings that other leases at the VA Campus were non-compliant. (8-ER-1746-64, 8-ER-1862-73).

The University's 2022 Congressionally Mandated Report also demonstrates the University's compliance. The Report concluded that the value of the in-kind services that the University was providing to Veterans was \$2,044,424.72, far above the lease's minimum requirement of \$1,350,000. (9-ER-2109).

The University's most recent reporting for 2024 shows that the total consideration VA received from September 29, 2023, through September

28, 2024, was \$3,267,757. (3-ER-538). This consisted of, among other things, (i) \$320,844 in annual rent, (ii) \$730,102 in consideration provided through UCLA School of Law Veterans Legal Clinic, (iii) \$693,166 in consideration provided through the UCLA/VA Veteran Family Wellness Center, (iv) \$447,143 in consideration provided through the VA UCLA Center of Excellence for Training and Research in Veteran Homelessness, Substance Abuse, Mental Illness and Recovery, and (v) other consideration. (3-ER-533-39).

II. Procedural Background

A. Plaintiffs File The Underlying Action, But Do Not Challenge The University's Lease

Plaintiffs commenced the underlying lawsuit on November 15, 2022. (7-ER-1602-1712). Plaintiffs then filed an amended complaint on May 15, 2023. (7-ER-1474-1601). The University was not a named defendant, and those pleadings focused on VA's alleged failure to provide "Permanent Supportive Housing" to disabled Veterans. (*Id.*)

Plaintiffs' operative pleading made no claim that the University's lease violated the 2016 Leasing Act or was otherwise invalid. While it alleged "VA has not stopped its illegal leasing" and is violating the 2016 Leasing Act, (7-ER-1577 at ¶ 282), it repeatedly cited both the 2018 VA OIG Report's and the 2021 VA OIG Report's findings as to *other* leases (not the University's lease) to support that conclusion. (7-ER-1577-79 at

¶¶ 282-289). The pleading also omitted that those same reports found the University's lease to be compliant with the 2016 Leasing Act.

On January 4, 2024, the district court solicited briefing on trial bifurcation and whether lessees to the challenged land deals should be joined as parties. (6-ER-1465). The district court found that the lessees were not necessary parties to the Land Use claims because their interests were adequately protected by the existing defendants, and that that the lessees were not necessary parties to the Plaintiffs' Housing claims because "as the government conceded at the most recent hearing, the [VA campus is] likely large enough that adequate housing could likely be built *without disturbing any of the existing land use agreements.*" (6-ER-1468-69 (emphasis added)).

In its July 14, 2024, summary judgment order, the district court again confirmed that the University's lease was not at issue. (6-ER-1443-63). It noted that "Plaintiffs argue that the VA breached that duty when it entered into the following three land use agreements: (1) a lease with the Brentwood School for student athletic facilities, (2) a revocable license for an oil drilling company, and (3) a lease with a parking lot. These three land use agreements are also the subject of Plaintiffs' Administrative Procedures Act ('APA') claims, where Plaintiffs argue that the leases are contrary to [the 2016 Leasing Act's] mandate that

leases on the West LA VA Grounds be veteran-focused.” (6-ER-1444). That order makes no mention of UCLA’s lease. (6-ER-1443-63).

B. In The University’s Absence, Plaintiffs Seek Leave During Closing Argument At Trial To Add A Claim Challenging The University’s Lease

This case then proceeded to trial in the University’s absence, with no claim pending against the University’s lease. During trial, UCLA’s Executive Director and Chief Liaison for Veterans Initiatives and Partnerships was questioned pursuant to a non-party fact witness subpoena issued by Plaintiffs. (6-ER-1354-1433).

Then, on the last day of trial, after evidence had closed and during Plaintiffs’ closing argument, and without providing notice to the University, Plaintiffs requested leave to add a claim challenging the University’s lease. While acknowledging that no such claim had been pled in the operative complaint, Plaintiffs argued that they should be permitted to amend to conform to proof at trial:

Although, Your Honor, plaintiffs did not specifically name UCLA in their complaint, we now seek to amend the complaint to conform to the extensive proof elicited at trial about the illegality of the UCLA lease.

(5-ER-1191).

VA opposed Plaintiffs’ request. It noted it would be unfair to add such a claim at this late date given the “administrative records were provided a long, long time ago” and did not include material related to

the University's lease. (6-ER-1247-48). VA also asserted that, under the Administrative Procedures Act, the district court was not empowered to grant injunctive relief. (*Id.*) Rather, the appropriate action upon a finding of unlawfulness is simply to "set aside the agency action and remand to the agency for further proceedings." (6-ER-1248). The district court permitted Plaintiffs' closing argument amendment, but neither notified the University of these newly alleged claims against it, nor required Plaintiffs to provide such notice.

C. In The University's Absence, The District Court Declares The University's Lease Void

On September 6, 2024, the district court issued its Post-Trial Opinion; Findings of Fact & Conclusions of Law, which concluded that the University's lease was void. (5-ER-982-85).

The court misconstrued the University-specific 2016 Leasing Act provisions in suggesting that baseball is an inappropriate use of the leasehold and is the "predominant focus" of the University's activities on the VA Campus. (5-ER-982-85). The court failed to even address the Act's incorporation of the 2016 Master Plan (which expressly recognizes use of the University leasehold for baseball). The order did not mention, much less discuss, the massive healthcare activities whereby UCLA doctors provide care to Veterans at the Campus—activities that easily satisfy the Act's "predominant focus at the Campus" test. The court also

inexplicably found that, under its lease, UCLA had only provided \$1,350,000 in *pro bono* in-kind services—despite UCLA’s congressional reports demonstrating that the extent of UCLA’s *pro bono* services is far greater. Nor did the court acknowledge that even if UCLA *had* provided only \$1,350,000 in *pro bono* in-kind services, it would more than satisfy its lease requirements. (See 5-ER-982; 3-ER-533-39; 8-ER-1746-64, 8-ER-1862-73). The court also erroneously ruled that the amount of services that the lease requires was insufficient—even though the 2016 Leasing Act expressly grants VA Secretary sole discretion to determine the extent of such services. (5-ER-984).

After holding a hearing regarding injunctive relief on September 25, 2024 (to which the court “invited” UCLA’s Interim Chancellor to attend), the district court enjoined the non-party UCLA from accessing its Jackie Robinson Stadium. (1-ER-46) (“UCLA is hereby enjoined from accessing the UCLA baseball fields and facilities on the West LA VA Campus until UCLA proposes a position on how the ten acres it currently occupies can be put to a use such that the provisions of services to Veterans is the predominant focus of the activities of the Regents at the campus.”).

As a result of the injunction, UCLA’s baseball team was forced to rush to collect its equipment and vacate the premises on the morning of September 26, 2024. (3-ER-570 at ¶ 3). The team was locked out from

September 26 until October 28, 2024, when the district court granted the University's motion to modify the injunction. (2-ER-49-53). The team has lost opportunities to play before professional baseball scouts, and its student-athletes have suffered and continue to suffer ongoing disruption. (3-ER-570-72 at ¶¶ 4-14). They have suffered such ongoing irreparable harm even though the point of a leasehold is to provide the tenant certainty and predictability in its right to use premises, and the lease previously had enabled the student-athletes to have a regular, predictable, and normal practice routine on top of their academic commitments at one of the country's leading public institutions. (*Id.*).

While the injunction has inflicted ongoing irreparable harm on the University and its students, coaches, staff, and their families, the district court has identified no immediate need for Jackie Robinson Stadium, such that the injunction has not delivered any benefits to Veterans. During its district court-forced closure, the stadium sat unused and was not maintained, even though the turf requires regular maintenance to preserve its quality.

D. The District Court Denies The University's Motion to Intervene But Modifies The Injunction To Permit Partial Use of the Leased Premises Until July 4, 2025

On October 3, 2024, responding to the district court's statement that the University would be required to pay more than the lease required if it wanted to continue to use the premises, the University

moved: (i) for temporary relief to modify the injunction based upon a proposal under which it would nearly double its rent and commit to showing it is currently providing in-kind services valued at \$2,700,000 annually to Veterans; and (ii) to intervene. (2-ER-162-347).

Under its proposal, the University asked the district court to allow use of the baseball facilities for the next 12 months and outlined why it believed it would be able to demonstrate that its lease complies with the 2016 Leasing Act—as VA OIG has repeatedly found. (2-ER-168). The University explained how that proposal presented a clear “win-win”—Veterans would get more consideration and UCLA’s students, coaches, staff, and their families would no longer suffer irreparable harm. (2-ER-174-78). The injunction then in place, by contrast, was a “lose-lose”—Veterans gained nothing from the injunction while risking losing the value they gain from the currently voided lease, and UCLA’s students, coaches, staff, and their families continued to suffer.³

On October 11, 2024, the district court reentered its Post-Trial Opinion; Findings of Fact & Conclusions of Law and post-trial injunctions as a Final Judgment and Permanent Injunction. The Final

³ During this lockout period, because of the University’s commitment to Veterans, it continued to provide the *pro bono* services it had been providing as lease compensation and continues to do so to this day, even as its leasehold remains impaired by the district court’s orders.

Judgment and Permanent Injunction states that the injunction against the University is “entered as part of this Judgment.” (1-ER-23).

On October 23, 2024, the district court denied the University’s motion to intervene and held in abeyance its motion to modify the injunction. (1-ER-2-19).

On October 28, 2024, the district court granted the University’s motion to modify the injunction in part. (2-ER-49-53). The court ruled that if UCLA paid \$600,000 within 14 days, it would be allowed to use the stadium and associated facilities until July 4, 2025, but would not be allowed to use the parking lot next to the stadium. (2-ER-49-50). The court reasoned that, because there were no plans to redevelop the stadium prior to July 2025, it made more sense to allow UCLA to continue to use the stadium up until that date. (*Id.*)

E. The University Appeals; This Court Stays The Judgment And Expedites The Appeals

On October 15, 2024, the University filed its notice of appeal from the Final Judgment and Permanent Injunction (10-ER-2196-99) and on October 28, 2024, appealed from the order denying its motion to intervene (10-ER-2175-95). The University had previously appealed from the original injunction, but this Court dismissed that appeal as moot once the injunction was incorporated into the Final Judgment and Permanent Injunction. *See Powers*, No. 24-6138, Dkt. 16.1.

The Federal Defendants then filed their own appeal from the Final Judgment and Permanent Injunction, *see Powers*, No. 24-6576, and, on November 8, 2024, moved for a stay pending appeal, *see* No. 24-6576, Dkt. 8. In their motion, the Federal Defendants argued that the district court had overreached in ordering VA to construct housing at the VA Campus and impermissibility infringed upon VA's judgment about how best to serve Veterans.

The Federal Defendants did not, however, seek a stay of the portion of the judgment declaring the University's lease void. Rather, apparently seeking to capitalize on that portion of the judgment, VA asked only that this Court stay the portion of the judgment prohibiting VA from *renegotiating* its existing leases. Meanwhile, the University had filed its own motion asking that this Court stay the portion of the Final Judgment and Permanent Injunction that had voided the lease and enjoined UCLA from using the leased land.

On November 25, 2024, this Court granted the Federal Defendants' motion for a stay pending appeal, deferred the University's request for a stay pending appeal to the merits panel, and expedited briefing in all related appeals.

SUMMARY OF THE ARGUMENT

As noted, the 2016 Leasing Act contains a provision, applicable only to the University's lease, that is different from provisions in that Act that

govern other leases. Plaintiffs' operative pleading did not challenge the University's lease, which VA OIG found statutorily compliant, and instead challenged only other leases that VA OIG found deficient. Plaintiffs tried their case based upon the different legal standard applicable to the other leases, then pivoted in closing argument to argue that the University's lease did not comply with the Act. But they based this belated argument upon the wrong legal standard—conflating the statutory provisions that apply to other leases, with the 2016 Leasing Act text that applies only to the University's lease.

The district court first violated due process and the Federal Rules of Civil Procedure in allowing the belated oral request to add a new claim against the University's lease during the closing argument at trial. That alone requires reversal of the judgment and all ensuing orders.

Independent of that reversible error, the district court also reversibly erred in finding that the University's lease violated the 2016 Leasing Act. The court's reasoning shows it erroneously conflated the distinct statutory provisions applicable to other leases with the unique provision applicable only to the University's lease—a misinterpretation of the Act that Plaintiffs had invited. Also independent of other reversible errors, the district court erred reversibly in voiding the lease, and enjoining UCLA from using the premises. Both conclusions rested on multiple independent errors.

First, the district court improperly deprived a tenant of a long-term possessory interest in land without affording the tenant notice of any violation and an opportunity to cure it. Indeed, the University's lease expressly required such notice and an opportunity to cure. Thus, the lease precluded the district court's summary eviction, which the court ordered without such notice and opportunity.

Second, because the 2016 Leasing Act expressly conferred discretion on the VA Secretary to determine the consideration required for the University's lease, both the order voiding the lease and the ensuing injunction unlawfully usurped the agency's discretion. At a minimum, even if one ignored all the other reversible errors (and they cannot be ignored), the district court at the most could remand the matter to the VA to address. Under no circumstances could the court itself summarily void the lease and dictate its ensuing land-use restrictions that it imposed on the University.

Lastly, the district court abused its discretion by both (a) allowing Plaintiffs to belatedly add a new claim against the University's lease via an oral request made during closing argument at trial that was never followed by written service of the new claim upon the University, nor any opportunity by the University to respond to the new claim, while (b) denying the University's motion to intervene after the University learned

that the court had voided its lease and enjoined it from using the leased premises.

Under settled law, the University has standing to appeal the denial of its motion to intervene. Its direct injury and interest in the appealed judgment and its incorporated injunction also gave it standing to appeal that judgment and injunction as well.

STANDARDS OF REVIEW

“[This Court] review[s] de novo a district court’s denial of a motion to intervene as a matter of right, with the exception of a denial based on timeliness, which is reviewed for abuse of discretion.” *Callahan v. Brookdale Senior Living Cmtys. Inc.*, 42 F.4th 1013, 1019 (9th Cir. 2022). “[This Court] review[s] a district court’s denial of a motion for permissive intervention for abuse of discretion.” *Id.* at 1020.

Due process challenges present questions of law, which this Court reviews de novo. *See United States v. Torres*, 995 F.3d 695, 701 (9th Cir. 2021); *Grigoryan v. Barr*, 959 F.3d 1233, 1239 (9th Cir. 2020). Similarly, a decision about whether “an absent party’s interest would be impaired involves a legal determination,” which is reviewed de novo. *Kescoli v. Babbitt*, 101 F.3d 1304, 1309 (9th Cir. 1996).

“[This court] review[s] the district court’s findings of fact after a bench trial for clear error and review[s] the district court’s conclusions of

law de novo.” *Bertelsen v. Harris*, 537 F.3d 1047, 1056 (9th Cir. 2008); *Lentini v. Cal. Ctr. for the Arts*, 370 F.3d 837, 843 (9th Cir. 2004).

ARGUMENT

The district court made a series of reversible errors with respect to the University. First, its decision to allow Plaintiffs to add a claim against the University orally, during closing argument, and without notice to the University, violated its right to due process. Second, the court misconstrued the 2016 Leasing Act, which contains unique criteria governing the University’s lease, to find a violation of that Act where none exists and to substitute itself for the VA in deciding whether the University has met the terms of the Act or the lease. Finally, the court improperly refused to allow the University to intervene despite the obvious impact of the above rulings on the University.

I. The Judgment And Injunction Are Legally Erroneous

A. The District Court Lacked Jurisdiction To Void The University’s Lease And Enjoin It

It is black-letter law that a district court may only enter judgments and orders against the parties before it. As Judge Learned Hand wrote nearly a hundred years ago: “[No] court can make a decree which will bind anyone but a party; a court of equity is as much so limited as a court of law; it cannot lawfully enjoin the world at large, no matter how broadly it words its decree It is not vested with sovereign powers to declare conduct unlawful; its jurisdiction is limited to those over whom it gets

personal service, and who therefore can have their day in court.” *Alemite Mfg. Co. v. Staff*, 42 F.2d 832, 832-33 (2d Cir. 1930); *see also Armstrong v. Brown*, 768 F.3d 975, 979-80 (9th Cir. 2014) (“Before issuing injunctive relief, the court must provide the affected party with notice and an opportunity to be heard.”).

Relatedly, “relief may be based on a theory of recovery only if the theory was presented in the pleadings or tried with the express or implied consent of the parties.” *Evans Prods. Co. v. W. Am. Ins. Co.*, 736 F.2d 920, 923-24 (3d Cir. 1984); *Cioffe v. Morris*, 676 F.2d 539, 541 (11th Cir. 1982). Although Federal Rule of Civil Procedure 15 permits amendments to conform to proof at trial in limited circumstances, the rule “assumes an amended pleading will be filed and anticipates service of that pleading” on any newly added party, and assumes such party will be given ten days to answer and thereafter defend against the new claim. *Nelson*, 529 U.S. at 466. Where, as here, no amended pleading “was ever actually composed and filed in court,” nor was the newly added party (the University was never added as a party) “accorded 10 days to state his defenses,” “the proceedings did not comply with Rule 15, nor did they comport with due process.” *Id.* at 466.

“The fundamental requisite of due process of law is the opportunity to be heard.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) (quoting *Grannis v. Ordean*, 234 U.S. 385, 394 (1914)). That

is exactly what was denied to the University in this case. Plaintiffs' original and amended pleadings did not include a claim against the lease with the University. (*See* 7-ER-1474-1601). When VA sought to interplead the lessees, the Court determined there was no need to do so. (*See* 6-ER-1468-69). And just six weeks before allowing the oral amendment, the court, in its summary judgment ruling, held that only three land-use agreements (not including the one with the University) were at issue in the case. (6-ER-1443-63). The district court then made a complete 180-degree turn erroneously declaring the University's lease void without requiring filing of the oral amendment to conform to proof or even service on the University, meaning the University had no opportunity to respond. (*See* 5-ER-982-85). The court then summarily enjoined the non-party University from accessing the baseball facility, again without service of any pleading, at a hearing at which the University was merely "invited" (without service of notice of this hearing, either). (*See* 1-ER-46-47; District Court Dkt. 306).

The Supreme Court has held these kinds of summary procedures are improper. "Procedure of this style has been questioned even in systems, real and imaginary, less concerned than ours with the right to due process." *Nelson*, 529 U.S. at 468.

The due process violation is troubling because, as discussed, not only did the operative pleading neither name the University as a party

nor make any claim against its lease, but at summary judgment, Plaintiffs and the district court confirmed that no assertion was being made that the University's lease was invalid. (*See* District Court Dkt. 192 at 20-21, 25; 6-ER-1443-63). It was only after close of evidence at a trial in which the University was not present that Plaintiffs, without prior notice to the University, orally requested to amend their pleading to add a claim that the University's lease was invalid. (5-ER-1191).

Without so much as service of an amended pleading on the University, the district court voided the lease. (*See* 5-ER-982-85). Then at the next hearing, the court evicted the University "until UCLA proposes a position on how the ten acres it currently occupies can be put to a use such that the provision of services to Veterans is the predominant focus of the activities of the Regents at the campus." (1-ER-46). The court only allowed the University interim access after it capitulated to paying additional benefits to VA above its lease terms.

All of this was improper, and the district court lacked jurisdiction either to void the lease or to enter the ensuing injunction.

B. The District Court Committed Legal Error By Misinterpreting The 2016 Leasing Act

Pursuant to the 2016 Leasing Act's Section 2(b)(3), VA is authorized to enter into a lease of no longer than ten years with the University so long as: (a) the lease is consistent with the 2016 Draft Master Plan

(which provides for baseball use on the University's leasehold parcel); (b) the provision of services to Veterans is the predominant focus of the activities of the University at the VA Campus during the term of the lease; (c) the University agrees to provide additional in-kind services, to an extent that VA Secretary determines, that principally benefit Veterans and are provided either (1) *pro bono*, or (2) via a then-existing medical affiliation agreement; and (d) the University maintains records supporting the value of the additional services it is providing. *See* Pub. L. No. 114-226, § 2(b)(3).

In its decision, the district court noted these unique provisions that apply only to VA's leases with the University. (*See* 5-ER-967) ("The Leasing Act ... creates unique requirements for VA leases with UCLA."). It erroneously concluded, however, that the lease violates the 2016 Leasing Act "because the main focus and principal beneficiary of the lease is UCLA's baseball program, not the provision of services to veterans." (5-ER-983). This ruling misinterprets the 2016 Leasing Act. The University's lease complies with that Act—as VA OIG repeatedly found. (*See* 8-ER-1746-64, 8-ER-2152).

Like every exercise in statutory interpretation, this one begins with the statute's plain language. A "fundamental canon of statutory construction is that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Trim v.*

Reward Zone USA LLC, 76 F.4th 1157, 1161 (9th Cir. 2023) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000), *superseded by statute on other grounds*).

Thus, “[t]he plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997).

Here, the subpart the district court invoked requires: “the provision of services to veterans [be] the predominant focus of *the activities of The Regents at the Campus* during the term of the lease.” See Pub. L. No. 114-226, § 2(b)(3)(B) (emphasis added). That contrasts with the subpart applicable to other VA Campus lessees, which requires that the “lease of real property” must “provide services that principally benefit veterans and their families” *Id.* § 2(b)(2). Thus, Congress tethered the “predominant focus” text applicable to the University to “the activities of The Regents at the Campus” as a whole. See *id.* § 2(b)(3)(B). It did not require the “predominant focus” *of the property The Regents leased* to be the provision of services to Veterans. See *id.*

What is more, a different provision, subsection (b)(3)(A), states that any lease with the University must be “consistent with” the 2016 Draft Master Plan. See *id.* § 2(b)(3)(A). That, too, is significant because the

2016 Draft Master Plan stated the “preferred use” of the parcel that VA had historically leased to the University was the *continued* use to house Jackie Robinson Stadium. (9-ER-2059). In other words, the 2016 Draft Master Plan contemplated UCLA would continue playing baseball at Jackie Robinson Stadium.

Thus, when subsection (b)(3)(A) and (b)(3)(B) are read together, and contrasted with subsection (b)(2), it is plain that Congress envisioned UCLA would continue using Jackie Robinson Stadium, so long as the predominant focus of the University’s *overall* activities on the VA Campus continued to be services to Veterans. That is how VA OIG interpreted the Act in the 2018 and 2021 VA OIG Reports, and how the University has focused its activities at that Campus since 2016.

Applying this requirement the way Congress intended (and VA OIG interpreted it), the predominant focus of the University’s activities on the VA Campus goes *far beyond* playing baseball. That is because, among other things, a vast number of UCLA medical professionals provide care at the Campus. (*See* Dkt. 15.2 at ¶¶ 3-13; 3-ER-528-531 at ¶¶ 12-16). The district court failed to even mention the health care activities at the Campus—even though the Act’s text shows it was those activities that were expected to satisfy the “predominant focus” requirement. (*See* 5-ER-982-985). In referring to the medical affiliation agreement and in distinguishing the *pro bono* services the Act requires, the text shows the

“activities” that must be the University’s predominant focus included the compensated health care provided via the medical affiliation agreement. And because the magnitude of those health care activities dwarf the baseball activities at the Campus, the health care activities alone satisfy the predominant focus test.

Indeed, even if UCLA was not providing health care at the Campus, just the *pro bono* in-kind services it provides eclipse, by a wide margin, the baseball activities at the Campus. UCLA’s programs and events to benefit Veterans at the Campus amounted to an average of 4,272 hours per year, whereas it occupied the Stadium for athletics an average of 980 hours per year. (See 3-ER-527 at ¶ 8). Additionally, based on the most recent data, the value of the in-kind services UCLA provides to Veterans is \$2.9 million in the last year (3-ER-526 at ¶ 6), far in excess of VA Secretary’s determination, via VA’s approval of the lease, that the required services must have an average annual value of \$1,350,000. (See 9-ER-2122-23).

Moreover, the 2016 Leasing Act and the 2016 Draft Master Plan stated that the “preferred use” of the parcel that VA had historically leased to the University was the *continued* use to house Jackie Robinson Stadium. (9-ER-2059). As such, the intent of Congress was not to penalize the University for its baseball program, but rather consider

whether the University's overall presence on the VA Campus was predominantly Veteran-focused.

The district court never applied the statute as it is written or analyzed whether the University's activities as a whole at the Campus are predominately focused on Veterans. This was legal error.

C. The Due Process Violation In Failing To Join The University Resulted In The District Court Never Hearing Correct Statutory Interpretation Arguments, Ignoring Pertinent Evidence, And Failing To Receive Other Relevant Evidence

This case vividly illustrates why due process and the Federal Rules of Civil Procedure require formal service of a written claim and an opportunity to defend the claim: failure to do so perverts the adversarial system model in which the contentions of interested parties help the court understand the law and facts. Here, with the University not present at the trial, the other parties tried the case based upon the different statutory requirements applicable to the other leases that were at issue. As noted, those other requirements focused exclusively on whether those parties' activities at the leased parcel alone principally served Veterans, and did not involve the text uniquely applicable to the University that requires consideration of its activities at the Campus as a whole. The eleventh-hour amendment to add an oral claim against the University's lease occurred after the close of evidence, at a trial at which the University's overall activities at the Campus were never addressed.

Thus, the parties' arguments relating to the University misstated the correct law.

Thus, the due process and rules violation misdirected the analysis of both the law and facts relating to the University's lease and resulted in all the errors raised on appeal. Without attempting to catalog all the ways in which this fundamentally unfair trial compromised the rulings that followed, here are a few.

In arguing—during the University's absence—that the University's lease did not comply with the 2016 Leasing Act, Plaintiffs misstated the statute as if it required the predominant focus of the University's activities at the ten-acre leased parcel to be the provision of services to Veterans. (5-ER-1190-91). As shown, the statute's text instead requires the predominant focus of all of UCLA's activities at the entire 387-acre Campus to be the provision of service to Veterans. In the University's absence from the trial, this erroneous statutory interpretation went un rebutted. The orders that followed merely noted the distinct statutory standard applicable to the University, but the court's application of that standard erroneously focused only on UCLA's activities at the ten-acre parcel in its judgment voiding the lease, in its injunction against UCLA, and in the conditions it stated UCLA must satisfy to lift the injunction. The court did not discuss or analyze UCLA's extensive provision of

medical services to Veterans at the Campus. Thus, the erroneous and un rebutted statutory arguments infected the district court's analysis.

Similarly, in their opposition to the University's Motion for Stay Pending Appeal, Plaintiffs argued that the University's lease does not comply with the 2016 Leasing Act based on testimony they elicited from UCLA's Executive Director and Chief Liaison for Veterans Initiatives and Partnerships at trial purportedly showing that "UCLA's NCAA baseball program is far more substantial than any of its programs for veterans[.]" (Dkt. 31.1 at 21). At trial, Plaintiffs questioned that Executive Director about the monetary value of the baseball program to UCLA, whether proceeds from that program went to VA, and whether VA OIG inquired into the value of that program. (6-ER-1367-70, 6-ER-1375-76, 6-ER-1378-85). Plaintiffs also asked him extensively about the hours and presence of the University's Veteran law clinic on the Campus, and why the University did not involve its other programs with Veterans. (6-ER-1391-1405).

VA did not ask that Executive Director any questions.

Thus, both Plaintiffs and VA failed to elicit any testimony about the extensive medical care services that UCLA provides at the Campus—even though those services alone satisfied the "predominant focus" requirement in the 2016 Leasing Act. The University introduced the

evidence now in the record regarding those extensive medical services activities only after the trial (*see* 5-ER-528-31 at ¶¶ 12-16)—when it first received notice that the district court had voided its lease.

Plaintiffs’ unrebutted questioning presented a limited, skewed picture of the University’s involvement at the Campus, but it was not present to correct that erroneous portrayal. What is more, Plaintiffs’ assertion that UCLA’s baseball program is “far more substantial” than its *pro bono* programs for Veterans is untethered to the dispositive inquiry—which as noted, focuses on the entirety of the services that UCLA provides at the entire VA Campus, leaves the amount of required *pro bono* services to VA Secretary’s discretion, and only factors into the analysis the baseball activities that occur on the Campus (not the entire NCAA baseball program or program revenue).

The University’s absence from the trial also resulted in the district court ignoring the Congressionally mandated reports that were introduced into the record at trial and that showed UCLA provided *pro bono* services in a far greater amount than what the district court found in its orders and judgment. (*See e.g.* 9-ER-2084-116). And due to the University’s absence, the district court ignored VA OIG’s repeated findings that the University’s lease complied, while the court’s orders elsewhere emphasized VA OIG’s findings of non-compliance of other leases. (*See* 8-ER-1746-64, 8-ER-2152; 5-ER-1009-12).

None of this should have happened. The University easily could and would have demonstrated that its lease complied with the 2016 Leasing Act if Plaintiffs and the district court had complied with the due process and civil procedure rules requirement of service of the claim and an opportunity to defend it. Without that happening, the district court got both the law and facts wrong.

D. The District Court Erroneously Leaped From Purported Lease Non-Compliance To Summary Eviction

Missing from the district court's rulings is any analysis of how any violation of the 2016 Leasing Act could even justify voiding the lease, much less a summary eviction.

1. The District Court Usurped The VA Secretary's Discretion

As VA noted in its opposition to Plaintiffs' oral motion to amend the pleadings, the Administrative Procedures Act required the district court to remand any violation to VA Secretary to exercise discretion as to how to remedy the violation. (*See* 6-ER-1247-48; *see also Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985) ("The reviewing court is not generally empowered to conduct a de novo inquiry into the matter being reviewed and to reach its own conclusions based on such an inquiry [T]he proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation.")). However,

regardless of whether Plaintiffs' claim was styled as one under the APA or for charitable trust, the dispositive point is that the 2016 Leasing Act delegated the authority to determine the lease's compliance to the VA Secretary. Thus, the court erred in leaping from a purported statutory violation to voiding the lease.

This is especially so because the order voiding the lease rested in part on the district court's and Plaintiffs' view that UCLA's *pro bono* in kind services did not suffice to satisfy the 2016 Leasing Act. But the Act did not specify any required level of such services and instead directed VA Secretary to exercise her discretion as to the extent of such services. See Pub. L. No. 114-226, § 2(a) ("The Secretary of Veterans Affairs may carry out leases described in subsection (b)"); § 2(b)(3)(C) ("The Regents expressly agrees to provide, during the term of the lease and to an extent and in a manner that the Secretary considers appropriate, additional services and support"). Thus, it was up to VA Secretary—not the district court or Plaintiffs—to determine whether the UCLA's services sufficed.

2. The District Court Failed To Balance The Hardships, And Ordinary Landlord-Tenant Law And The Lease Prohibited Its Summary Eviction

The court leaped even further in moving immediately from voiding the lease to evicting the University from the property with no notice. The record contains no indication that the court ever considered the relevant

hardships or analyzed any of the established criteria for injunctive relief, as it was required to do. *See L.A. Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1203 (9th Cir. 1980) (“Traditional standards for granting a preliminary injunction impose a duty on the court to balance the interests of all parties and weigh the damage to each, mindful of the moving party’s burden to show the possibility of irreparable injury to itself and the probability of success on the merits.”); (*see also* 1-ER-20-24; 39-41; 46-47; 2-ER-80-107; 4-ER-633-733; 880-914). The court did not even mention the hardship it was imposing on students, coaches or staff, nor acknowledge the absence of any harm to Veterans in merely allowing, pending further proceedings, the same use of the baseball facilities that has occurred for six decades. (2-ER-80-107).

Moreover, the injunction evicting the University is inconsistent with the settled principle that a leasehold grants a tenant an interest in land that cannot be summarily terminated based merely on a violation and without an opportunity to cure. For example, even the summary procedures under California law for evicting a commercial tenant require notice, an opportunity to cure, and only if that does not happen, proof of a lease violation that entitles the evicting party to possession and judgment. *See, e.g.*, Cal. Civ. Proc. Code § 1161.1. The purpose of this notice “is to inform the tenant of the breach so the tenant can rationally choose whether to cure the breach and retain possession, quit the

property, or contest the allegations.” *Lee v. Kotyluck*, 59 Cal. App. 5th 719, 731 (2021); *see also Delta Imps. v. Mun. Court*, 146 Cal. App. 3d 1033, 1036 (1983) (“the notice must give the tenant the alternative of performing or quitting possession”); *Fifth & Broadway P’ship v. Kimny, Inc.*, 102 Cal. App. 3d 195, 202 (1980) (the purpose of the statutory notice period is to allow the tenant to cure the default and retain possession).

Although such state law likely does not apply to this federal agency lease, the 2016 Lease itself incorporates such principles. That lease provides that in the event of the University’s failure to pay any monetary obligation or provide the required in-kind consideration for forty-five (45) days after notification of said failure, the University will be deemed to be in default. (*See* 9-ER-2153). Upon the occurrence of a default, the Lease provides a cure period of ninety (90) days for the University to begin to remedy the default. (*Id.*) Thus, even if the University were not in compliance with its lease, it was guaranteed protection from the kind of abrupt ejection from its leasehold without notice that occurred here.

In sum, the injunction and summary eviction is indefensible at every step of the analysis: (1) it violated due process, (2) the lease was valid, and (3) any lease violation required notice and an opportunity to cure and/or a remand to VA Secretary. The district court was required to satisfy all three requirements. Its orders met none of them.

II. Standing To Appeal

The procedure that resulted in the voiding of the University’s lease and associated injunction has yielded an unusual circumstance in that the University has been injured by an action to which it is not a party. This raises the issue of standing to appeal, but the answer is straightforward. Because the judgment directly alters the University’s rights in its leasehold, and the injunction enjoins it directly, it has standing to appeal the judgment and associated injunction. It also has standing to appeal the denial of its motion to intervene.

Non-parties may move for leave to intervene for purposes of appeal and, where such motion is denied, appeal that denial. *See Habelt v. iRhythm Techs., Inc.*, 83 F.4th 1162, 1167 (9th Cir. 2023). Further, “a non-party against whom judgment is entered has standing without having intervened in the district court action to appeal the district court’s exercise of jurisdiction over him.” *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1989).

Here, the University has standing to appeal from the judgment and its incorporated injunction on both grounds.

A. The University Has Standing To Appeal Because It Is Directly Aggrieved By The Judgment And Injunction

“[A] non-party who is enjoined or otherwise directly aggrieved by a judgment has standing to appeal the judgment without having

intervened in the district court.” *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1277 (9th Cir. 1992). Though the University was never a party to the underlying action, the district court has consistently directed rulings at the University, including the final judgment and injunction from which the University appealed. This suffices to confer standing. *See Hal Roach Studios*, 896 F.2d at 1546.

Further, although the University was able to obtain a partial stay of the injunction enjoining it from accessing the baseball field until July 4, 2025—at a hefty price—it remains enjoined from accessing portions of its leasehold (the stadium parking lot) to which it is rightfully entitled. (*See* 2-ER-49-50). What is more, the University’s ouster from its leasehold remains a tangible threat if, by July 4, 2025, this Court has not yet ruled on the motion for a stay pending appeal, has not decided the appeal, and the University and VA are unable to negotiate a new lease by then. (*See id.* (“After July 4, 2025, the land on which the baseball facilities sits may be used for housing. If UCLA is unable to reach a new agreement with VA by that date, UCLA will lose access.”)).

B. The University Also Has Standing To Appeal The Erroneous Denial Of Its Motion To Intervene

Denial of a motion to intervene as of right is an appealable final order that this Court has jurisdiction to review under 28 U.S.C. § 1291.

See United States v. City of Oakland, 958 F.2d 300, 302 (9th Cir. 1992).

Thus, the University has standing to appeal the intervention order.

III. The District Court Abused Its Discretion In Denying The University's Motion To Intervene

If this Court reverses on the above grounds, it need not even reach the order denying the motion to intervene. But if this Court does reach the order denying the University's motion to intervene, that order was yet another reversible error.

Under Rule 24(a)(2), a non-party is entitled to intervention as of right when it “(i) timely moves to intervene; (ii) has a significantly protectable interest related to the subject of the action; (iii) may have that interest impaired by the disposition of the action; and (iv) will not be adequately represented by existing parties.” *W. Watersheds Project v. Haaland*, 22 F.4th 828, 835 (9th Cir. 2022) (citation omitted). These factors are construed broadly in favor of intervention. *See id.* The University's motion satisfied all four factors, and the district court's denial was an abuse of discretion.

1. The Motion To Intervene Was Timely

“Timeliness is determined by the totality of the circumstances facing would-be intervenors,” with a focus on: (1) the stage of the proceeding; (2) prejudice to the parties, and (3) any reason for delay. *Smith v. L.A. Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir. 2016) (citing

United States v. Alisal Water Corp., 370 F.3d 915, 921 (9th Cir. 2004)). “[C]ourts should be mindful that the crucial date for assessing the timeliness of a motion to intervene is when proposed intervenors should have been aware that their interests would not be adequately protected by the existing parties”—not commencement of the suit. *W. Watersheds*, 22 F.4th at 836 (quoting *Smith*, 830 F.3d at 854).

Even “[i]f the trial court identified the correct legal rule,” this Court may find an abuse of discretion if the trial court’s “application of that rule was (1) illogical, (2) implausible, or (3) without support in inferences that may be drawn from the facts in the record.” *Smith*, 830 F.3d at 853-54 (citation omitted).

Here, the district court’s application of the timeliness factors was implausible and without support in the record.

a. The Stage Of The Proceedings Supported Intervention

“[I]n analyzing the stage of the proceedings factor, the [m]ere lapse of time alone is not determinative.” *Smith*, 830 F.3d at 854 (citation and internal quotation marks omitted). Thus, even post-judgment motions to intervene are timely if “necessary to preserve some right which cannot otherwise be protected.” *Pellegrino v. Nesbit*, 203 F.2d 463, 465 (9th Cir. 1953); see *United States ex rel. McGough v. Covington Techs. Co.*, 967 F.2d 1391, 1394-95 (9th Cir. 1992). Where the intervenor seeks to

address a change of circumstances, the stage of proceedings factor should be analyzed by reference to the change in circumstances, not the litigation's start. *See Smith*, 830 F.3d at 854.

According to the district court, the University “chose not to intervene after Plaintiffs filed their Complaint in 2022, after VA expressly notified them that their lease was at risk in January 2024, after they participated in extensive discovery, after they designated a Rule 30(b)(6) witness for depositions, after their witness testified twice during a weeks-long trial, and again after the Court issued its Post-Trial Opinion on September 6, 2024.” (1-ER-9). In the court's eyes, the University's determination not to intervene at these points rendered the injunction barring UCLA from the Stadium and related facilities “a foreseeable consequence of Plaintiffs' Complaint”, rather than a change in circumstances. (*Id.*) Indeed, per the court, “[n]o Parties have changed their positions from the beginning, and UCLA's lease has been implicated since the inception of this lawsuit.” (1-ER-10).

This analysis was error. The finding that the University's lease was “implicated since the inception of this lawsuit” is incorrect. Plaintiffs orally moved to amend their complaint to make a claim against that lease *after* the close of evidence at trial. Prior to then, the filings and rulings indicated the University's lease was *not at issue*.

First, although Plaintiffs' operative pleading sporadically referenced the University's lease, the pleading did not claim this lease violated the 2016 Leasing Act or was otherwise invalid, while repeatedly citing VA OIG Reports' adverse findings with regard to *other* leases. (7-ER-1577-1580 at ¶¶ 282-289). Then, the district court denied VA's motion to add the University as a necessary party. (6-ER-1468). In calling out VA's "vigorous" defense of certain leases as legal in that order, the court did not address the fact that VA's defense had been directed at the leases challenged in the pleading, not at the University's lease that had only been obliquely referenced in that pleading.

The court also found that lessees were nonessential to Plaintiffs' Housing Claims because, "as the government conceded at the most recent hearing, the [VA campus is] likely large enough that adequate housing could likely be built *without disturbing any of the existing land use agreements.*" (*Id.* (emphasis added)). Thus, Plaintiffs' Land Use claims in their operative pleading did not make a claim against the University's lease, and the district court also found that Plaintiffs' Housing claims did not implicate those lessees whose leases *were* at issue.

Plaintiffs and the court reinforced that the University's lease was not at issue at the summary judgment stage. In Plaintiffs' summary judgment motion, they called out VA's leases with BreitBurn Drilling,

Safety Park, and the Brentwood School. But they did not mention UCLA or the UCLA lease.⁴ (*See* District Court Dkt. 192 at 20-21, 25).

In its July 14, 2024, summary judgment order, the district court noted that “Plaintiffs argue that the VA breached that duty when it entered into the following three land use agreements: (1) a lease with the Brentwood School for student athletic facilities, (2) a revocable license for an oil drilling company, and (3) a lease with a parking lot. These three land use agreements are also the subject of Plaintiffs’ Administrative Procedures Act (‘APA’) claims, where Plaintiffs argue that the leases are contrary to [the 2016 Leasing Act’s] mandate that leases on the West LA VA Grounds be veteran-focused.” (6-ER-1434, 1444). That order does not mention UCLA’s lease. (6-ER-1434-1463).

It is therefore plain that Plaintiffs *did* change their position from not challenging the University’s lease, to challenging it for the first time in their oral amendment motion during closing argument.

Moreover, as the University represented in its Motion, the entry of the September 6, 2024 order voiding the University’s lease caused this

⁴ In their opposition to the University’s Motion For Stay Pending Appeal, Plaintiffs-Appellees argue that UCLA’s lease is not mentioned in the summary judgment motion because Plaintiffs “did not seek a ruling thereon.” (Dkt. 31.1 at 11 n. 3). Plaintiffs strain credulity in asserting they would move for summary judgment on the entirety of their APA claim, specifically identifying the leases at issue, while failing to reference UCLA or its lease.

litigation to enter a new phase, which was then compounded by the district court's September 25 injunction and October 2 modification of that injunction. (*See generally* 2-ER-162-184). Upon learning of the September 6 Post-Trial Opinion voiding its lease (of which the University did not receive notice), it immediately began participating in discussions with the court, Plaintiffs, and VA to try to mitigate the immediate harm resulting from the erroneous order. The University then immediately moved to intervene, which covered both its interest in the claims made against its lease and its appeal interest. *See Pellegrino*, 203 F.2d at 466 ("Such a right which cannot otherwise be protected than by intervention is the right to appeal from the judgments entered on the merits by the District Court."). Thus, considering the progression of the litigation in context and the claims Plaintiffs and the court represented to be at issue before and after judgment, the University's Motion was timely and the court's reasoning was error.

Moreover, the district court's analysis of timing failed to appreciate that VA did not adequately represent UCLA's interests (*see pp.* 53-54, below), so giving only VA oral notice of an amendment adding a claim against the University—without any service of the claim on the University or other notice to it—constituted a change in circumstances that made its intervention timely.

b. The University Was (And Is) The Only Prejudiced Party

The district court concluded the University's intervention would "undermine a carefully negotiated plan and harm those who stand to benefit from the relief already underway." (1-ER-13). It accused the University of trying to "relitigate issues that have already been resolved, reopen a case that has already been litigated, and stall the collaborative process the Parties have tediously worked towards." (1-ER-13-14).

This analysis ignored that all that process occurred under pleadings and motion practice that never challenged the University's lease. It did not seek to re-litigate any other issues or affect plans or discussions that had occurred, but simply sought to litigate for the *first time* a new claim as to its lease that was added in closing argument at trial. Because the Plaintiffs did not make their oral request to amend their pleading to add a claim against that lease until after the close of evidence, the University was denied its opportunity to prove its lease *complied* with the 2016 Act and was thus already providing the benefits that the district court claimed were lacking. Indeed, the only prejudiced entities are the University, which has been robbed of its lease, despite more than satisfying its lease and statutory requirements, and Veterans, who were placed at risk of losing the millions of dollars of value provided in lease compensation and who obtained no benefit by the University's eviction from Jackie Robinson Stadium.

c. The University Did Not Delay

The district court also found that “UCLA was aware of this litigation as early as 2022” and “should have been aware that their interests were not adequately protected by the Parties from the beginning,” and “UCLA has no good cause to intervene now.” (1-ER-14). These findings likewise cannot be reconciled with the undisputed record fact that Plaintiffs first orally moved to amend their pleading to add a claim against the University’s lease during closing argument.

The relevant inquiry is not when the lawsuit was filed or whether the University was aware of the lawsuit, but is instead when it should have become aware that its interests were not protected by the parties. *See W. Watersheds*, 22 F.4th 828 at 836.

The district court’s assertion that “UCLA should have been aware that their interests were not adequately protected by the Parties from the beginning” (1-ER-14) ignores that Plaintiffs did not make their oral request to add a claim against the University’s lease until the closing argument of a trial at which the University was not present. *See Pellegrino*, 203 F.2d at 465 (“In determining the timeliness of such a motion a court should consider not only in the period of time that has passed, but also the circumstances contributing to the delay.”).

The court’s ruling that “UCLA has no good cause” to intervene is baffling. The order voiding the University’s lease suddenly altered its

position from one in which it had a lease that permitted it with stability and certainty to use the ten-acre parcel in the same way it had used that parcel since the early 1960s, to one in which its baseball program was thrown into turmoil and had to race over to the facilities to clear out their equipment. The University had good cause to intervene.

The appropriate starting point to evaluate the timeline of the University's intervention is when it appeared at the September 2024 hearing to which the UCLA Chancellor was "invited." The University appeared to discuss with the court and the parties what the order voiding the lease—which had never even been served on the University—contemplated would next happen with the lease. At that very hearing, the district court summarily enjoined UCLA from using the leased land, and UCLA quickly moved to intervene thereafter to protect its appeal and leasehold interests. The University's conduct in moving to intervene was entirely justifiable under the circumstances.

The district court's analysis lacked logic or support in the record.

2. All Other Factors Mandate Granting The University's Motion To Intervene

This Court reviews the other Rule 24(a)(2) factors *de novo*. *See W. Watersheds*, 22 F.4th 828 at 835. All support intervention.

a. The University Has An Interest Relating To The Subject Of The Litigation

“Whether an applicant for intervention demonstrates sufficient interest in an action is a practical, threshold inquiry. No specific legal or equitable interest need be established.” *See Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1493 (9th Cir. 1995), *overruled on other grounds in Wilderness Soc’y v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011) (citations omitted). A significant protectable interest is established where the intervenor’s interest “is protectable under some law, and [] there is a relationship between the legally protected interest and the claims at issue.” *Sierra Club v. EPA*, 995 F.2d 1478, 1484 (9th Cir. 1993), *overruled in part on other grounds by Wilderness Society*, 630 F.3d at 1178; *see also Forest Conservation Council*, 66 F.3d at 1494. The September 6, 2024 order voided the University’s ten-year lease on the VA Campus. The court then summarily ejected the University, and allowed restricted access for a limited period only upon payment of more money than its lease otherwise would have required. The University, through its leasehold, has an interest related to the subject of this litigation.

b. The University’s Interests Will Be Practically Impaired Absent Intervention

An intervenor’s interests are “practically impaired” absent a grant of intervention if they “would be substantially affected in a practical sense by the determination made in an action” *Stockton v. United*

States, 493 F.2d 1021, 1023 (9th Cir. 1974); Fed. R. Civ. P. 24 advisory committee’s note to 1966 amendment.

The September 6, 2024 Post-Trial Opinion and September 25, 2024 injunction, later temporarily modified, substantially affect the University’s property and contractual interests in its leasehold. Rule 24(a) allows it to intervene to address the impairment of those interests. *See Forest Conservation Council*, 66 F.3d at 1498 (collecting cases).

c. Existing Parties Do Not Adequately Represent The University’s Interests

In determining whether an intervenor’s interests are adequately represented, this Court assesses “whether the interest of a present party is such that it will undoubtedly make all the intervenor’s arguments; whether the present party is capable and willing to make such arguments; and whether the intervenor would offer any necessary elements to the proceedings that other parties would neglect.” *Id.* at 1498-99. This burden is “minimal: it is sufficient to show that representation *may* be inadequate.” *Id.* at 1498 (emphasis in original). This is consistent with the rule that the Rule 24(a) factors are construed in favor of intervention.

Here, the existing parties are Plaintiffs and VA. Plaintiffs are plainly opposed to UCLA’s interests.

VA is UCLA's *landlord* and thus has an *adverse* interest in the lease agreement—it is the *opposite side* of the lease transaction. The lease gave the UCLA a possessory interest in the leased land on lease terms that bound VA. Any voiding of the lease, by contrast, affords the landlord VA the opportunity to renegotiate a new lease, which could include terms more favorable to VA than the current lease.

The record demonstrates VA's adversity and that VA's presence is inadequate to protect the University's interests. At trial, VA did not ask Mr. DeFrancesco any questions, much less attempt to elicit the evidence of UCLA's extensive activities at the Campus that easily satisfied the 2016 Leasing Act. (*See* 6-ER-1354-1433). It did not emphasize its own VA OIG's repeated findings that the University's lease complied with the Act, nor did VA emphasize the reports to Congress that were in the record that showed that the extent of UCLA's *pro bono* activities far exceeded the Act's requirements and its lease obligations. VA never argued correctly the distinct 2016 Leasing Act text uniquely applicable to the University.

Finally, VA, in moving the district court and this Court for a stay pending appeal of the judgment, excluded from its stay request a request to stay the portions of the judgment and the injunction that voided the lease and barred UCLA from use. VA sought only to stay the prohibition on it renegotiating new lease terms. Thus, VA sought to *take advantage*

of the erroneous rulings against the University to seize an opportunity to renegotiate lease terms. That position was *adverse* to the University's interests.

This record demonstrates the *obvious* proposition that a landlord cannot adequately represent a tenant with regard to these issues.

Finally, what happens to the lease has not yet been finally determined, as the district court's modified injunction is contingent upon the University reaching an agreement with VA that satisfies all parties. The University has a direct interest in the future determinations of the lease, and is entitled to preserve its rights to appeal orders that affect its property and contractual interests.

As such, this Court should reverse the denial of the University's Motion to Intervene.

IV. Remedies Upon Reversal

Upon reversal, an appellant is entitled to restitutionary relief that restores it to the position it would have enjoyed had the district court not erred. *See Sanders v. City of Newport*, 657 F.3d 772, 783-84 (9th Cir. 2011). Moreover, the point of a lease is to grant an interest in land that assures the tenant quiet enjoyment of the land on the lease terms. The reversible errors here resulted in deprivation of a property interest that must be remedied. Accordingly, the reversal should include directions to

provide restitutionary and any other relief necessary to ensure the University is restored to the position it would have enjoyed had the district court not voided its lease or made any of the ensuing orders.

CONCLUSION

The Court should grant the University's pending motion for stay pending appeal, and should then reverse the portion of the judgment declaring the University's lease void and enjoining UCLA. This Court should direct the district court to restore the University to its lease immediately, and leave as the sole issue on remand with regard to that lease the remedies necessary to make the University whole. Although that ruling would eliminate the need for this Court to reach the order denying the University's motion to intervene, if this Court reaches that issue, it should reverse that order as well.

Dated: January 17, 2025.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Circuit Rule 32-1(a) provides that “opening and answering briefs filed by appellant and appellee, respectively, may not exceed 14,000 words.”

This Appellant’s Opening Brief contains 12,680 words excluding the parts of the motion exempted by FED. R. APP. P. 32(f), and therefore complies with Circuit Rule 32-1(a).

This brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because it has been prepared in a proportionately spaced typeface using Microsoft Word 2013 in 14-point Century Schoolbook font.

Date: January 17, 2024

/s/ Raymond A. Cardozo
Raymond A. Cardozo

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Appellant's Opening Brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Date: January 17, 2025

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