

No. 24-6338 & 24-6603

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

JEFFREY POWERS, et al.,

Plaintiffs-Appellees,

v.

DENIS RICHARD McDONOUGH, et al.,

Defendants-Appellants

On Appeal from the United States District Court
for the Central District of California

APPELLEES' ANSWERING BRIEF

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INTRODUCTION

Federal law dictates that the VA may enter a lease agreement on its West LA Grounds (the “Grounds”) with UCLA only if “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.” West Los Angeles Leasing Act of 2016, Pub. L. No. 114-226 § 2(b)(3), 130 Stat. 926 (2016) (the “Leasing Act”). The District Court found that UCLA did not meet that statutory requirement, based largely in part on the testimony of UCLA’s own 30(b)(6) corporate representative, and voided VA’s lease with UCLA. *Powers v. McDonough*, 2024 WL 4100866, at *38 (C.D. Cal. Sept. 6, 2024), *as amended* (Oct. 11, 2024); *see also* 4-SER-0949. Apparently dissatisfied with its witness’s testimony that “the predominant focus of UCLA on [the VA] campus is baseball . . . and not service to veterans,” 4-SER-0949, UCLA now contests the District Court’s judgment, protesting that it was “absen[t]” from trial and “stunned” by the District Court’s injunction. UCLA Br. at 1. But the record belies those claims.

UCLA was invited to intervene in this action at the beginning of 2024. It chose not to, even after the District Court granted intervention to another leaseholder so notified. Nor did UCLA intervene during or after its participation in document and deposition discovery centered entirely on the legality of its lease with VA—or even after its 30(b)(6) corporate representative was subpoenaed to testify at trial. Only after the parties completed a four-week trial and the District Court issued its Post-Trial Order implicating UCLA’s lease did UCLA seek to intervene in this matter. The District Court

denied that motion as untimely. This Court should affirm that ruling and decline to hear UCLA's appeal. Where, as here, a nonparty strategically refrains from intervening, then files an eleventh-hour motion to intervene in order to thwart a remedy, supplement the record, and relitigate issues already tried, it seeks relief too late.

STATEMENT OF ISSUES

1. Did the District Court abuse its discretion in ruling that UCLA's post-trial motion to intervene, which comes more than seven months after the Regents' express notice from the Government that its lease was implicated in this lawsuit, is untimely?

2. Does UCLA have standing to appeal any portion of the District Court's judgment before it has successfully intervened in this case?

3. Assuming UCLA has standing to appeal, did the District Court commit clear error in finding that the predominant focus of UCLA's activities on the Grounds is *not* the provision of services to veterans, as is required by the Leasing Act?

4. Assuming UCLA has standing to appeal, did the District Court, having ruled the lease agreement between VA and UCLA was illegal, abuse its discretion in voiding that lease and enjoining UCLA from using VA property after July 4, 2025, unless it enters a new lease that complies with the Leasing Act?

STATUTORY PROVISIONS

Pertinent statutory provisions are reproduced in the addendum.

STATEMENT OF THE CASE

I. Factual Background

For over fifty years, UCLA has located its NCAA baseball program on VA property intended to house disabled veterans. Today, UCLA's Jackie Robinson Stadium, its practice infield, and an adjacent parking lot occupy a roughly 10-acre parcel of VA land. *Powers*, 2024 WL 4100866, at *38. Elsewhere on the VA campus, a parcel of about the same size accommodates over 200 units of permanent housing for disabled veterans. 2-SER-0488–89; 7-SER-1895.

In 2011, a group of homeless and disabled veterans sued the VA alleging mismanagement of the Grounds, and the district court in that case voided UCLA's lease, among other third-party land-use agreements with the VA. *Valentini v. Shinseki*, 2013 WL 12121981, at *14 (C.D. Cal. Aug. 29, 2013), *vacated sub nom. Valentini v. McDonald*, 2015 WL 14020677 (C.D. Cal. Feb. 17, 2015). As here, UCLA moved to intervene in that lawsuit after the plaintiffs' claims had been adjudicated, despite knowing "that there was a pending action that might affect its use of the [baseball] Stadium." *Valentini v. Shinseki*, Case No. 11-04846-SJO (C.D. Cal.), Dkt. 164 at 7. The district court denied the motion to intervene in trial court proceedings, reasoning that "UCLA must . . . absorb the risk it took by allowing the Government to represent its interests and bear the cost of litigation alone." *Id.*

During the pendency of the appeal, the *Valentini* plaintiffs and the VA reached a settlement in which the VA committed to drafting and implementing a Master Plan to

provide housing and supportive services for disabled veterans on the Grounds. *Powers*, 2024 WL 4100866, at *5. After the VA settled *Valentini*, Congress passed the Leasing Act. *See* Pub. L. No. 114-226. The Leasing Act authorized the VA to enter into a lease with UCLA for no more than ten years 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.

Pub. L. No. 114-226 § 2(b)(3).

The VA and UCLA entered a new, ten-year lease in December 2016. *Powers*, 2024 WL 4100866, at *38; *see also* 10-ER-2117. For a piece of property in West Los Angeles with an annual rental value—as of 2015—of approximately \$2.7 million, UCLA pays

\$300,000 annually in rent and provides in-kind services to veterans it values at \$1,350,000. *Powers*, 2024 WL 4100866, at *39; 8-ER-1725; 9-ER-2112. UCLA uses third-party grants to fund many of the in-kind services it counts as consideration for its lease. 4-SER-0933–35. The VA could not provide its Office of Inspector General (“OIG”) with any “analysis for the basis of the negotiated consideration,” leaving the OIG “unable to determine” if UCLA was paying fair value for use of VA land. *Powers*, 2024 WL 4100866, at *39.¹

Eight years after the VA and UCLA entered into the 2016 lease, UCLA’s Executive Director and Chief Liaison for Veterans Initiatives and Partnerships, Mr. Anthony DeFrancesco—the Regents’ 30(b)(6) corporate representative in this case—testified that “the predominant focus of UCLA on [the VA] campus is baseball and that baseball complex and not service to veterans.” 4-SER-0887; 4-SER-0949. UCLA’s Jackie Robinson stadium is a state-of-the-art facility—its field is the same dimensions as Dodger Stadium—which hosts some 26 NCAA games every season, plus playoff games. 4-SER-0898; 4-SER-0901; 2-SER-0439–40. The baseball program attracts contributions from wealthy donors—the Branca family, the Steele family, the Guerrero

¹ The District Court noted that, “[p]rior to the *Valentini* lawsuit, UCLA paid the VA around \$56,000 a year for use of the entire baseball complex. . . . [T]hat the VA accepted for years this shockingly low fee for 10 acres of prime real estate in West Los Angeles indicates the VA employees negotiating that lease were not acting in the best interests of veterans.” *Powers*, 2024 WL 4100866, at *38.

family²—and generates income for the Regents (or the NCAA league) from tournament games, broadcasting revenues, and summer baseball camps—none of which goes to veterans. *Powers*, 2024 WL 4100866, at *38; 3-SER-0720–23; 4-SER-0901–03; 4-SER-0910–11. Its head baseball coach makes “in the neighborhood of \$1 million a year.” 4-SER-0894.

With VA’s acquiescence, UCLA has repeatedly prioritized its baseball program over veterans’ wants and needs. During the COVID-19 pandemic, while homeless veterans slept in tents outside the gates of the VA, UCLA “refused to make the parking lot adjacent to its practice infield available for emergency housing” for homeless veterans, *Powers*, 2024 WL 4100866, at *55, out of concern that “if the parking lot was used to house unhoused veterans, then it wouldn’t be available for fans to use when there were home UCLA baseball games,” 4-SER-0914–15. Later that year, UCLA accepted a two-million dollar donation from the Branca family to make improvements to its baseball complex—specifically, to construct a practice field that UCLA believed necessary to be competitive with other NCAA programs. 4-SER-0908–09. The VA and UCLA privately negotiated an amendment to the 2016 lease to allow for these improvements. *Powers*, 2024 WL 4100866, at *38. Recognizing veterans would be frustrated to see another baseball field constructed on land deeded for housing, the VA

² Although the Government took the position that federal law prohibited UCLA from naming its facilities on federal property after donors, the most the VA ever did was send UCLA a letter, which UCLA ignored. 3-SER-0723–27.

kept this lease amendment a secret as long as it could. *Powers*, 2024 WL 4100866, at *38–39. When the news of this new construction became public, the VCOEB recommended that the VA terminate the lease amendment, but construction went forward anyway. 2-SER-0533. At trial, VA’s former Medical Center Director, Dr. Steven Braverman, admitted that it was a “mistake” for the VA to not “engage with veterans” about the lease amendment. 3-SER-0734.

As the District Court noted, much of the in-kind consideration that UCLA provides under the terms of its lease has “questionable” value. *Powers*, 2024 WL 4100866, at *39. For example, the University counts as consideration the full value of complimentary UCLA baseball tickets for veterans, despite having hundreds of empty seats at a typical game. *Powers*, 2024 WL 4100866, at *39; 4-SER-0897–99. UCLA also counts the value of free hot dogs and soda for veteran attendees as consideration for its lease. 4-SER-0899. Free baseball caps for veterans were billed at \$30 apiece. 4-SER-0900. Promotional magnets displaying the UCLA baseball schedule amounted to \$132 of in-kind services. *Id.* Once, when the university awarded a “veteran of the year” at a baseball game, it counted the \$137 spent on a trophy as consideration for its lease. 4-SER-0900–01.

Worse, the in-kind services UCLA promised, and which could have real value for veterans, have been notably deficient. For example, one of UCLA’s main commitments under the 2016 lease was to “establish and operate . . . a UCLA Veterans Legal Clinic on the West Los Angeles campus” at a cost to UCLA of \$4,000,000 over

ten years. 10-ER-2122. UCLA’s 30(b)(6) witness Mr. DeFrancesco testified that, from what he could tell, in 2017 only a “few matters” were handled by the clinic, although he did not find any evidence that the clinic had a physical presence on the VA campus. 4-SER-0918–19. When Mr. DeFrancesco started his position in 2020, he “received a lot of complaints” regarding the accessibility of the law clinic—that there was no entrance marked as handicap accessible, that there were “debris strewn all around” the hallway inside the building, and that the door to the building was locked during normal business hours. 4-SER-0921–23. Veteran’s advocate Robert Reynolds testified that when he started trying to connect veterans to the legal clinic, the office was barely accessible, and there was only one day a week that a veteran could call to register for services. *Powers*, 2024 WL 4100866, at *55; 2-SER-0525–26 (the legal clinic “was behind a locked door, so you could get into the lobby, but then there was no one sitting in the lobby and the door was locked to get back into the offices. So, veterans were showing up there and were unable to get in.”). It took Mr. DeFrancesco “about a year of constant discussion with the VA to get [the] lock changed” so that the building would be open for clinic visits. 4-SER-0924.

The clinic, which enrolls six to eight students per semester and none over the summer, provides a very limited range of direct civil legal services and *no* civil rights cases or criminal defense, despite demonstrated need. 4-SER-0926; 4-SER-0930–31; 2-SER-0528–29; 4-SER-0928. During the spring semester, students “work on projects that are not necessarily [direct service] legal matters”; for example, the clinic worked an

amicus brief in *Grants Pass v. Johnson*—one of over forty submitted to the Supreme Court. 4-SER-0929–30. The clinic has experienced issues with turnover of clinic staff attorneys, and in fact even *lost a number of applications* to fill a staff attorney vacancy in 2024. 4-SER-0926. Even VA’s Dr. Braverman testified that he was “personally not satisfied with the hours and the breadth of the legal assistance for veterans from UCLA.” 3-SER-0715–16.

At the conclusion of trial, the District Court agreed with UCLA’s 30(b)(6) corporate representative that “[t]he predominant focus of UCLA’s activities on the Grounds is its NCAA baseball program, not services to veterans,” and voided UCLA’s 2016 lease. *Powers*, 2024 WL 4100866, at *55; *see also id.* at *38–39. UCLA appealed this ruling. 10-ER-2196; UCLA Br. at 2–3. The VA did not.

II. Procedural Background

A. UCLA’s Notice of Its Interests in this Case

Plaintiffs filed their Original Complaint on November 15, 2022, alleging that the Government mismanaged the Grounds through multiple third-party leases, including its 2016 Lease with UCLA. *See, e.g.*, 7-ER-1612–13 (“VA has failed even to consult veterans about plans to construct, and recently expand, UCLA’s state-of-the-art baseball facilities on land where the VA is required to build Permanent Supportive Housing.”). The Complaint sought to enjoin the Government from “executing and maintaining **any** land use agreements under the [Leasing Act] that do not primarily

benefit veterans.” 8-ER-1712. These pleadings remained unchanged in Plaintiffs’ First Amended Complaint, filed May 15, 2023. 8-ER-1485; 7-ER-1600.

In its January 22, 2024, Order Regarding Trial Bifurcation and Joinder; and Ordering Lessees Be Notified, the District Court found that UCLA and other leaseholders were not necessary parties to this litigation because their interests were “being protected” by the Government, which was “vigorously defending [its] leases as legal.” 7-ER-1468. Further, the District Court noted, “despite the highly publicized nature of the government’s alleged misuse of the WLA Grounds and over a decade of litigation, the absentee leaseholders have never sought to intervene.” 7-ER-1469. Nonetheless, to notify leaseholders (including UCLA) of the potential impact to their interests, the District Court required the parties to serve its Order on them. 7-ER-1470.

The Government thus notified UCLA on January 31, 2024, that “[t]he Regents of the University of California has been identified as a party to land use agreements or easements with the Department of Veterans Affairs that plaintiffs purport to challenge in this lawsuit,” and that such land use agreements “may potentially be impacted by this litigation.” 1-SER-0039. After receiving similar notice, another leaseholder (Bridgeland Resources, LLC) moved to intervene on March 4, based in part on its assertion that the Government did not adequately represent its interests. 2-SER-0365. The District Court granted intervention on April 5. 2-SER-0358.

B. UCLA's Participation in Discovery and Trial

On April 1, Plaintiffs served a subpoena to produce documents and requests for production on UCLA. 1-SER-0042–56. *Each and every* request for production addressed the legality of UCLA's lease with VA (*e.g.*, requesting “[a]ll documents and communications relating to [UCLA's] compliance with Section 2(b)(3) of [the Leasing Act] for each year since the inception of each and every lease”). Counsel for Plaintiffs and UCLA met and conferred about these requests, in response to which UCLA produced approximately 150 documents comprising hundreds of pages in a series of three productions. 1-SER-0031.

On April 24, 2024, Plaintiffs served a subpoena to testify and notice of Rule 30(b)(6) deposition on UCLA. The notice enumerated the following topics for examination:

1. Any lease entered into by the REGENTS for real property or facilities on the WLA GROUNDS on or after January 1, 2016.
2. Consideration provided by the REGENTS under the terms of any such lease described in (1), including but not limited to consideration provided for the principal benefit of veterans and their families.
3. Communications between the REGENTS and the VA regarding any such lease described in (1) and any such consideration described in (2).
4. The REGENTS' use of real property or facilities on the WLA GROUNDS on or after January 1, 2016, and its documentation of such use.
5. Efforts by the REGENTS to modify or eliminate conditions of compliance with any such lease described in (1) or WLALA.

Counsel for Plaintiffs and UCLA (Mr. Drown) met and conferred regarding this notice on May 13, 2024. 1-SER-0032. UCLA designated Anthony DeFrancesco as its Rule 30(b)(6) corporate representative and produced Mr. DeFrancesco for deposition on June 6, 2024. *Id.*; 1-SER-0069. Michael Goldstein of the University of California Office of the General Counsel defended Mr. DeFrancesco's deposition, during which Plaintiffs' counsel solicited extensive testimony regarding UCLA's lease with the VA; whether UCLA was in compliance with the Leasing Act; whether UCLA had investigated "alternative sites for the UCLA baseball program"; and whether the VA had considered constructing housing on the UCLA's leased parcel. *E.g.*, 1-SER-0086–0087 (discussion of the Leasing Act); 1-SER-0099 ("Q: . . . [I]n your duties and responsibilities, do you have specific responsibility to ensure that the lease is being complied with? A: Yes."); 1-SER-0134–0136 (discussion of alternative sites for baseball program); 1-SER-0164 ("Q: Has there ever been any discussion to your knowledge at UCLA about we ought to go back and look at all the years we paid \$56,000 and . . . if that number's below fair market value we should . . . give to the VA, the difference from what we were paying and what the real fair market value was? A: Not to my knowledge. Q: And the VA has never requested any such accounting or payment from The Regent[s], isn't that also true? A: (Unintelligible) yes."); 1-SER-0180 ("Q: Has anyone from the VA, to your knowledge, ever had any discussion about the amenability of that land for purposes of permanent and supporting housing? A: No.").

At trial, Plaintiffs asked the District Court to find the VA's lease with UCLA illegal at both opening and closing argument. 6-ER-1220 (“We are asking the Court to declare the land use agreements with Brentwood, with UCLA, with SafetyPark, and with Bridgeland to be illegal.”); 6-ER-1191 (“[W]e now seek to amend the complaint to conform to the extensive proof elicited at trial about the illegality of the UCLA lease.”). Despite producing Mr. DeFrancesco pursuant to subpoena on August 22 and 29, counsel for UCLA and the Regents chose not attend trial. 2-SER-0293–99; 2-SER-0319–20. At trial, Mr. DeFrancesco attested that, contrary to the Leasing Act's requirements, “the predominant focus of UCLA on that campus is baseball and that baseball complex and not service to veterans.” 4-SER-0949.

C. The District Court's Orders

On September 6, the District Court issued its Post-Trial Opinion, Findings of Fact, and Conclusions of Law, holding that the 2016 Lease “violates the Leasing Act, and by extension, the VA's fiduciary duty to veterans,” and is therefore void. *Powers*, 2024 WL 4100866, at *39. The District Court stated that it would “determine an exit strategy for UCLA's 10 acres following [a] hearing on injunctive relief” on September 25, and it invited UCLA's Chancellor to participate. *Id.* at *68; 4-SER-0953; 2-SER-0322. After the hearing, at which UCLA's Chancellor and counsel were present and heard, the District Court entered its Order Enjoining UCLA from Accessing Baseball Facilities on West LA VA Campus. UCLA Br. at 51; 1-ER-46.

On October 3, UCLA moved to intervene and to modify the injunction, proposing to pay the VA \$600,000 in rent over the next twelve months if it could resume using the baseball complex. 1-ER-168. On October 23, the District Court denied intervention as untimely, opining that loss of access to its baseball facilities was “a foreseeable consequence of the Plaintiffs’ Complaint, yet UCLA waited until the Court’s Post-Trial Opinion and injunctive relief hearings to mount a defense.” 1-ER-9. UCLA noticed appeal of the denial of intervention. 10-ER-2175.

The District Court held in abeyance UCLA’s motion to modify the injunction. 1-ER-2. At a hearing on October 28, UCLA represented to the trial court and the parties that it would not seek emergency relief with the Ninth Circuit if it were allowed use of the baseball facilities on the VA property through July 4, 2025. 6-SER-1569–70. Based on that representation, the District Court modified the injunction to permit UCLA to access the baseball stadium and practice field through July 4, 2025, and—as UCLA had proposed in its motion—ordered the Regents to make a \$600,000 payment to VA. 1-SER-0003; 1-ER-168. The District Court explained that “UCLA *may* lose access to the baseball facilities after July 4, 2025, if the Parties are unable to reach a settlement that complies with the West LA Leasing Act and this Court’s Post-Trial Opinion, Findings of Fact and Conclusions of Law.” 1-SER-0005 (emphasis added). The District Court continued to restrict UCLA’s access to two parking lots that would be used imminently to house disabled veterans. 1-ER-50.

Notwithstanding its representation to the District Court that it would not seek further emergency relief, UCLA on November 19, 2024, filed in this Court what it called a “joinder” to VA’s emergency stay motion, requesting that this Court issue an emergency stay of the District Court’s order relating to UCLA, a relief not sought by the VA’s motion. Case Nos. 24-6603, Dkt. 28; 24-6338, Dkt. 20.1; *see also* Case No. 24-6576, Dkt. 8.1. Plaintiffs moved to strike UCLA’s request as procedurally improper and estopped by its representations below. Case Nos. 24-6603, Dkt. 20.1; 24-6338, Dkt. 21.1. UCLA also filed a motion to stay in its own appellate dockets on November 19. Case Nos. 24-6603, Dkt. 15; No. 24-6338, Dkt. 19.1. On November 26, the panel in Case No. 24-6576 granted the Government’s emergency stay motion, consolidated UCLA’s appeals, and referred UCLA’s stay motion to this panel. Case No. 24-6576, Dkt. 43.

SUMMARY OF THE ARGUMENT

This Court should affirm the District Court’s denial of UCLA’s motion to intervene and rule that UCLA does not have standing to appeal the District Court’s Judgment. If this Court reaches UCLA’s appeal of the District Court’s Judgment, it should affirm the Judgment in full.

1. The District Court did not abuse its discretion in finding UCLA’s motion to intervene untimely. UCLA filed its motion to intervene only after the District Court issued its post-trial order, nearly two years after this litigation was initiated. Its attempt to re-litigate this case prejudices the existing parties, which expended significant

resources bringing this case to a month-long trial. And UCLA waited to intervene more than seven months after receiving express notice that its lease was at issue. Because each of the timeliness factors strongly disfavor intervention, UCLA's motion to intervene was properly denied. *See United States v. Oregon*, 913 F.2d 576, 588 (9th Cir. 1990) ("Timeliness is the threshold requirement for intervention.").

2. UCLA does not have standing to appeal any portion of the District Court's judgment until this Court reverses the denial of intervention. Only parties may appeal a judgment unless one of two exceptions apply, and neither does here: UCLA did not participate in the district court proceedings beyond responding to subpoenas, nor do the equities of the case weigh in favor of hearing appeal by a nonparty that strategically sat on the sidelines until after the conclusion of trial. This Court should not consider UCLA's appeal of the District Court's judgment.

3. VA's 2016 lease with UCLA did not comply with the Leasing Act. The evidence presented at trial unambiguously demonstrated that UCLA's NCAA baseball program—not the provision of services to veterans—is the "predominant focus" of the Regents on the Grounds.

4. The District Court did not abuse its discretion in voiding VA's lease with UCLA and enjoining UCLA from using VA property after July 4, 2025, unless it enters a new lease that complies with the Leasing Act. First, the District Court's injunction against the Government binds UCLA because UCLA is in privity with the VA, and UCLA received actual, express notice in January 2024 that its lease was implicated in

this lawsuit. Second, the District Court did not abuse its discretion in 1) voiding a lease that it found to have violated a federal statute, and 2) enjoining UCLA's access to VA property, given its finding that the VA has "persistent[ly] mismanage[d] the West LA VA Grounds," *Powers*, 2024 WL 4100866, at *42, and that land UCLA has occupied may be needed to effectuate relief on Plaintiffs' Rehabilitation Act claims, 1-SER-0004.

STANDARDS OF REVIEW

This Court reviews the denial of intervention as a matter of right *de novo*, except for the timeliness determination, which is reviewable only for abuse of discretion. *U.S. ex rel. McGough v. Covington Techs. Co.*, 967 F.2d 1391, 1393-94 (9th Cir. 1992). This Court reviews the denial of permissive intervention for abuse of discretion. *Callaban v. Brookdale Senior Living Communities, Inc.*, 42 F.4th 1013 (9th Cir. 2022)

Following a bench trial, this Court reviews the District Court's "findings of fact . . . for clear error." *Yu v. Idaho State Univ.*, 15 F.4th 1236, 1241 (9th Cir. 2021). Findings of fact "must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility." *Id.* The District Court's "conclusions of law . . . are reviewed *de novo*." *Id.* Statutory constructions are reviewed *de novo*. *In re Mitchell*, 977 F.2d 1318, 1320 (9th Cir. 1992).

Finally, the decision to grant or deny permanent injunctive relief is subject to three separate standards of review: this Court reviews "the legal conclusions *de novo*, the factual findings for clear error, and the decision to grant a permanent injunction, as

well as its scope, for an abuse of discretion.” *Oracle USA, Inc. v. Rimini St., Inc.*, 879 F.3d 948, 964 (9th Cir. 2018), *rev’d in part on other grounds*, 586 U.S. 334 (2019).

ARGUMENT

I. The District Court Correctly Denied UCLA’s Post-Trial Motion to Intervene.

A. UCLA’s Motion to Intervene Was Untimely.

Intervention—whether by right or permission—requires UCLA first to demonstrate that its motion is “timely.” Fed. R. Civ. P. 24(a), (b)(1); *United States v. Washington*, 86 F.3d 1499, 1503 (9th Cir. 1996) (“If the court finds that the motion to intervene was not timely, it need not reach any of the remaining elements of Rule 24.”); *Oregon*, 913 F.2d at 588 (“Timeliness is the threshold requirement for intervention.”). Whether a motion to intervene is timely depends on “(1) the stage of the proceeding . . . ; (2) the prejudice to the other parties; and (3) the reason for and length of the delay.” *Washington*, 86 F.3d at 1503 (quoting *U.S. ex rel. McGough v. Covington Techs. Co.*, 967 F.2d 1391, 1394 (9th Cir. 1992)). As to the third factor, the “substantial lapse of time weighs heavily against intervention.” *Id.* UCLA’s motion fails each of the timeliness factors.

1. The general progression of litigation is not a “change in circumstances” sufficient to justify UCLA’s belated intervention.

UCLA filed a motion to intervene in the District Court nearly two years after Plaintiffs filed this litigation and nine months after the Government expressly informed UCLA, pursuant to the District Court’s order, that its leasehold was at issue in this

lawsuit. *See* 7-ER-1602; 1-SER-0039. The motion for intervention followed months of litigation on the subject of the (il)legality of UCLA’s lease with VA—in which counsel for UCLA produced hundreds of pages of documents, designated a 30(b)(6) witness, defended that witness’s daylong deposition, and produced that witness twice at trial. *See supra* at 11–13. UCLA does not contest these facts, nor did UCLA attempt to offer testimony at trial to the contrary. Indeed, the District Court relied on the testimony of UCLA’s witness in finding that “UCLA’s lease has been implicated since the inception of this lawsuit.” 1-ER-10.

Nevertheless, the university maintains that “[its] lease was not at issue” until “after the close of evidence at trial.” UCLA Br. at 45 (emphasis omitted). But the “findings and rulings” on which UCLA relies are unavailing. That the District Court denied VA’s motion to join *any* leaseholder as a necessary party—UCLA omits that the motion was denied as to all lessees—does not mean that no lease was at issue in the lawsuit. *See* 7-ER-1464.³ That Plaintiffs’ motion for *partial* summary judgment, filed in May 2024, “did not mention UCLA or the UCLA lease” in no way “reinforce[d] that the University lease was not at issue,” especially given that Plaintiffs deposed UCLA’s 30(b)(6) corporate representative less than a month later. *See* UCLA Br. 46; *see also* 2-

³ Moreover, as the District Court noted, while it found that “UCLA was not a required party under Rule 19, this does not excuse UCLA’s failure to intervene earlier. Rule 19 and Rule 24 are distinct inquiries. Rule 19 requires a party to be joined if disposing of the action in a person’s absence would impede their ability to protect their interest or leave an existing party subject to a substantial risk of inconsistent obligations. . . . Meanwhile, Rule 24 considers whether a party’s claim or defense shares a common question of law or fact with the main action, making intervention permissible even when a party is not required under Rule 19.” 1-ER-11–12.

SER-0329; 1-SER-0069. And of course, Plaintiffs' amendment of pleadings to conform to facts does not negate UCLA's express notice in January 2024 that its lease was at issue. 1-SER-0039.

According to UCLA, the District Court's post-trial findings of fact and conclusions of law—and the injunctive relief following therefrom—constitute a “new phase” of litigation justifying its post-trial intervention. UCLA Br. at 47–48. But “a new phase [that] came about in the general progression of the case to a close” is not a change in circumstances warranting belated intervention. *Garza v. Cnty. of Los Angeles*, 918 F.2d 763, 777 (9th Cir. 1990); *see also R & G Mortg. Corp. v. Fed. Home Loan Mortg. Corp.*, 584 F.3d 1, 7 (1st Cir. 2009) (“As a case progresses toward its ultimate conclusion, the scrutiny attached to a request for intervention necessarily intensifies.”). As the District Court found, its “post-trial orders were ‘a foreseeable part of a chain of events’ that UCLA was warned of in January 2024, not a new phase of litigation.” 1-ER-10 (citing *Garza*, 918 F.2d at 777); *c.f. Western Watersheds Project v. Haaland*, 22 F.4th 828, 838 (9th Cir. 2022) (allowing intervention while explaining that if the proposed intervenor, “like the candidate in *Garza*, had known about Plaintiffs’ lawsuit and recognized what the requested remedy might entail, the outcome here would likely be different”). There was no error in the District Court’s finding that “the stage of proceedings analysis properly runs from the start of this lawsuit or **at the latest** when UCLA received express notice of its risk to the lease,” and thus “this factor weighs heavily against intervention.” 1-ER-10 (emphasis added).

2. UCLA’s attempt to relitigate already-adjudicated claims plainly prejudices the existing parties.

The District Court found that UCLA’s intervention risks “substantial prejudice” to the existing parties, as UCLA seeks to “reopen a case” that “[t]he existing Parties have litigated actively since [2022] . . . expend[ing] substantial resources and great effort from pre-trial motions to a multi-week trial.” 1-ER-13–14. UCLA does not directly challenge this conclusion. It merely avers that its motion to intervene did not seek to “re-litigate any *other* issues”—seemingly conceding that it *does* intend to re-litigate at least one issue. UCLA Br. at 49. And according to UCLA, the *university* is the only prejudiced party, again relying on the false claim that it was “denied its opportunity” to make a case regarding its lease. *Id.*

But as the District Court found, UCLA’s motion obviously prejudices the existing parties by delaying the resolution of the litigation in which it has—until after trial—intentionally and strategically declined to participate. *See League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1304 (9th Cir. 1997) (intervention would prejudice existing parties where “the proposed intervenor waited twenty-seven months before seeking to interject itself into the case, only to move the court for full-party participation at a time when the litigation was, by all accounts, beginning to wind itself down”); *Cal. Dep’t of Toxic Substances Control v. Com. Realty Projects, Inc.*, 309 F.3d 1113, 1119 (9th Cir. 2002) (district court did not abuse discretion in finding prejudice to existing parties

where “intervention ‘at the final stage of th[e] action would unnecessarily prolong the litigation . . . and further delay’” relief).

As this Court has recognized, courts “emphasize[] the seriousness of the prejudice which results when relief from long-standing inequities is delayed.” *Alaniz v. Tillie Lewis Foods*, 572 F.2d 657, 659 (9th Cir. 1978). That is precisely the case here: the District Court’s opinion and judgment are the culmination not only of this two-year litigation, but also of the 13-year-long struggle of unhoused veterans to restore the Grounds to its intended purpose as a home for disabled veterans. *Powers*, 2024 WL 4100866, at *1 (Plaintiffs’ “demand is not new. Over a decade ago, in 2011, a similar group of unhoused veteran plaintiffs brought a nearly identical suit, seeking shelter and housing on land given to the federal government in the 1800s for the purpose of establishing a home for disabled veterans.”). Allowing UCLA to delay this relief in order to relitigate the legality of its lease—an issue already tried and decided—is clearly prejudicial. *Washington*, 86 F.3d at 1503–04 (district court did not abuse its discretion in finding prejudice where proposed intervenor sought “to relitigate an issue that the Court already decided[,]” which “would prolong and complicate the case[] to the detriment of those parties that have been part of the litigation from the outset”).

3. A nonparty’s strategic refusal to participate in litigation affecting its interests until after trial is not a valid reason for delay.

UCLA agrees with the District Court that “[the] length of the movant’s delay . . . is measured from the date the proposed intervenor should have been aware that its

interests would no longer be protected adequately by the parties[.]” 1-ER-14 (citing *Washington*, 86 F.3d at 1503); UCLA Br. at 50 (“[t]he relevant inquiry is . . . when [the university] should have become aware that its interests were not protected by the parties.”). Taking UCLA at its word, if it is “obvious . . . that a landlord cannot adequately represent a tenant with regard to [a lease agreement],” UCLA Br. at 55, the university would have recognized the need to intervene no later than January 2024, when it received express notice that its lease was at risk.⁴ 1-SER-0039. The District Court found as much, determining that “the nearly nine months that have passed since [UCLA’s] express notice weigh[s] heavily against intervention.” 1-ER-16.

UCLA’s decision not to intervene in the litigation—at its outset, after receiving express notification that its lease was at risk, or even after participating in extensive discovery *on the legality of that lease*—was plainly a strategic decision. The District Court’s finding that intervention was untimely should be no surprise to UCLA, which made the same strategic decision to wait on the sidelines a decade ago in *Valentini*. See *Valentini v. Shinseki*, Case No. 11-04846-SJO (C.D. Cal.), Dkt. 144 (moving to intervene after entry of judgment). Allowing “UCLA to intervene and relitigate the case after it has avoided the cost of two years of litigation,” the Court explained, would “convert UCLA’s

⁴ UCLA also might have heeded the Government’s warning that “given the leaseholders’ distinct reasons for entering into the land-use agreements and their unique knowledge of their own usage of the leased properties, there is little reason to think that Federal Defendants are capable of and will ‘undoubtedly’ make all of the absent leaseholder’s arguments. Importantly, the leaseholders’ participation is also necessary to ensure that their interests are not neglected in any eventual settlement discussions, in which Plaintiffs may seek to alter the uses of leased properties.” 2-SER-0404–05.

apparent decision to sit on the sidelines into a riskless proposition,” creating “the perverse incentive that proper application of the third timeliness factor is designed to avoid.” *Id.* The *Valentini* court therefore denied UCLA’s intervention for the purpose of participating in future trial court proceedings to discourage “other would-be intervenors” from “await[ing] judgment in cases potentially affecting their interests and then . . . request[ing] a ‘do over’ from the trial court in the event of an adverse judgment.” *Id.* at 7–8.

So too here. The reason and length of UCLA’s delay weigh decisively against intervention. See *United States v. Alisal Water Corp.*, 370 F.3d 915, 923–24 (9th Cir. 2004) (“An applicant’s desire to save costs by waiting to intervene until a late stage in litigation is not a valid justification for delay. To hold otherwise would encourage interested parties to impede litigation by waiting to intervene until the final stages of a case.”); see also, e.g., *Alt v. EPA.*, 758 F.3d 588, 591 (4th Cir. 2014) (district court did not abuse its discretion in denying intervention as untimely where proposed intervenor was aware “of what was transpiring in the district court . . . and made a strategic decision not to devote its ‘limited resources’ to the matter at an earlier stage”); *Moten v. Bricklayers, Masons & Plasterers, Int’l Union*, 543 F.2d 224, 228 (D.C. Cir. 1976) (motion to intervene was likely untimely where proposed intervenor’s “decision not to seek intervention much earlier may have been an informed, tactical one” and proposed intervenor “did not claim and in all likelihood could not claim that it did not have actual notice” of the litigation); *Larson v. JPMorgan Chase & Co.*, 530 F.3d 578, 583–84 (7th Cir. 2008) (district

court did not abuse its discretion in denying intervention “by a sophisticated litigant with a large stake who had no good excuse for failing to seek intervention,” “who appears to have acted for strategic reasons,” and “whose attempt to intervene delayed” the remedy and thus the conclusion of litigation over a decade-old issue); *Floyd v. City of New York*, 770 F.3d 1051, 1058 (2d Cir. 2014) (district court did not abuse its discretion in denying intervention as untimely where proposed intervenors “knew or should have known” about the risks to their interests ahead of district court’s liability and remedial orders, because such risks “were readily apparent from years of extensive public filings and intense media scrutiny”).

In sum, the District Court did not abuse its discretion in finding UCLA’s intervention untimely. Because UCLA did not satisfy the “threshold requirement” of timeliness, denial of the university’s motion to intervene was proper. *Oregon*, 913 F.2d at 588.

II. UCLA Does Not Have Standing to Appeal the District Court’s Judgment.

Unless and until this Court grants relief on UCLA’s appeal from the District Court’s denial of its motion to intervene, UCLA—a non-party—lacks standing to appeal from the District Court’s judgment and incorporated injunction.⁵ Generally, “only parties to a lawsuit, or those that properly become parties, may appeal an adverse

⁵ “Standing to appeal” is distinct from the requirements of “[Article III] constitutional standing.” *U.S. ex rel. Alexander Volkhoff, LLC v. Janssen Pharmaceutica N.V.*, 945 F.3d 1237, 1241 (9th Cir. 2020).

judgment.” *Devlin v. Scardelletti*, 536 U.S. 1, 7 (2002). This Court hears non-party appeals only under two “exceptional circumstances”: when (1) the appellant significantly “participated in the district court proceedings,” and (2) the “equities of the case weigh in favor” of hearing the appeal. *U.S. ex rel. Alexander Volkhoff, LLC v. Janssen Pharmaceutica N.V.*, 945 F.3d 1237, 1241–42 (9th Cir. 2020).

Neither applies here. Despite knowing since 2022 that its interests were affected in this litigation (and since January 2024 that its lease was at risk), UCLA deliberately chose not to intervene in the proceedings below. 1-ER-9. Only after the District Court voided UCLA’s lease in September 2024 did UCLA even attempt to join this case. 1-ER-6–7 ; *cf. Habelt v. iRhythm Techs., Inc.*, 83 F.4th 1162, 1167 (9th Cir. 2023) (it may be equitable to hear appeal where party “haled” non-party into court against its will and without notice). These are precisely the circumstances under which this Court refuses to hear non-party appeals.⁶ *Volkhoff*, 945 F.3d at 1242 (“[W]e have denied nonparties the right to appeal when they choose not to meaningfully involve themselves in the district court proceedings.”); *id.* (“In *Citibank*, we dismissed a nonparty’s appeal from a judgment when the nonparty ‘was well-apprised of the proceedings’ but ‘chose not to intervene, join or make an appearance to contest jurisdiction’ [below], ‘even though it had actual knowledge of the proceedings and their substance.’”).

⁶ Plaintiff-Appellees would not object to UCLA’s appearance as an amicus in the Government’s appeal.

III. The District Court’s Judgment and Injunction Were Proper.

Unless this Court reverses the District Court’s denial of UCLA’s motion to intervene, it should not consider UCLA’s appeal of the District Court’s judgment. However, if the Court does reach UCLA’s appeal of the District Court’s judgment, it should affirm.

A. The District Court Properly Ruled UCLA’s Lease Violates the 2016 Leasing Act.

Contrary to UCLA’s representation, the District Court did not interpret the Leasing Act to “require the ‘predominant focus’ *of the property the Regents leased* to be the provision of services to Veterans.” UCLA Br. at 30. Rather, as UCLA admits, the District Court repeatedly described the Act as written. *See, e.g., Powers*, 2024 WL 4100866, at *30 (“a necessary feature of any lease with UCLA is that UCLA’s main focus of its activities *on the West LA VA Grounds* is providing services to veterans”) (emphasis added); *id.* at *55 (“The predominant focus of UCLA’s activities *on the WLA Campus* is its NCAA baseball program, not services to veterans.”) (emphasis added); *see also* UCLA Br. at 29 (“the district court noted these unique provisions that apply only to VA’s leases with the University.”). Moreover, the District Court’s findings explicitly discuss UCLA’s activities on the Grounds that do *not* take place on UCLA’s leasehold. *See, e.g., Powers*, 2024 WL 4100866, at *55 (detailing factual findings on UCLA’s Veterans Legal Clinic).

It is UCLA, not the District Court, that relies on a flawed interpretation of the Leasing Act. The Leasing Act requires that UCLA provide “additional services and support (for which the Regents is not compensated by the Secretary or through an existing medical affiliation agreement).” Pub. L. No. 114-226 § 2(b)(3)(C). The plain reading of this language indicates that additional services provided by UCLA should *not* be compensated by the Secretary, *nor* should they be compensated through an existing medical affiliation agreement. But UCLA erroneously contends the opposite, claiming that services provided through a (compensated) medical affiliation agreement *do* count as the “additional services and support” required by § 2(b)(3)(C). UCLA Br. at 29. In contrast, the District Court’s interpretation of the statute is consistent with the statute’s plain language and the interpretation by VA’s OIG. *See* 8-ER-1718 n.1 (“the predominant focus” of any lease with UCLA “must be additional services provided at no cost to VA and not compensated through an existing medical affiliation agreement”); *Powers*, 2024 WL 4100866, at *30 (“[a]ny agreement with UCLA where UCLA’s main focus is not veterans violates the Leasing Act”).⁷

Moreover, nothing in the trial record supports UCLA’s claim that its health care activities automatically render the lease valid. UCLA’s 30(b)(6) corporate representative—the university personnel whose “primary . . . job is to oversee the 2016

⁷ If this Court holds that Congress did intend medical services to be counted, there is still no evidence in the trial record that would support a finding that the medical services outsize the baseball program, as UCLA claims.

lease”—did not describe UCLA’s medical services on the Grounds. 4-SER-0889. Nor did VA witnesses. Perhaps most markedly, neither the VA OIG reports nor the 2023 Congressional Mandated Report even *mention* UCLA’s medical affiliation in their evaluation of the lease, much less include description or valuation of UCLA’s medical services. 8-ER-1715; 8-ER-1835; 8-SER-2385. If the District Court’s Post-Trial Order “failed to even mention the health care activities at the Campus,” UCLA Br. at 31, it is because UCLA’s medical affiliation did not come up even once in a sixteen-day trial addressing, *inter alia*, the legality of the UCLA lease. UCLA could have appeared to offer testimony about the health care activities on the Campus; it chose not to.

As the District Court found, and UCLA’s own witness confirmed, “the predominant focus of UCLA’s activities” on the Grounds “is [its] baseball program, not providing services to veterans.” *Powers*, 2024 WL 4100866, at *38. The evidence adduced at trial unambiguously demonstrates that UCLA’s NCAA baseball program is far more substantial than its programs for veterans, including a small legal clinic that did not even unlock its doors during regular business hours. *Id.* at 55; 4-SER-0918–30 (testimony of Anthony DeFrancesco discussing how the legal clinic locked its doors to veterans and provided minimal services to them); *see also supra* at 8–9.

Although UCLA leans heavily on the VA OIG’s findings, those reports fail to describe—let alone gauge the predominance of—UCLA’s baseball program as compared to its other activities on the Grounds. 8-ER-1715; 8-ER-1835. Indeed, the OIG did not even *ask* UCLA for information about its use of the baseball facilities—

not the number of UCLA students and staff who participate in the program, not the university's revenue from broadcasted games, not the university's profits off its summer baseball camps—not any metrics by which to judge predominance. 4-SER-0894–03; 4-SER-0909–12.

UCLA spends much of its brief lamenting its “absence from the trial,” UCLA Br. at 34, claiming that it “could and would have” shown the validity of its lease if only it had been present, UCLA Br. at 37. As discussed *supra*, UCLA's failure to intervene earlier was its strategic choice. Now, the university relies on declarations submitted after the District Court made its extensive Post-Trial Findings of Fact and Conclusions of Law. *See* UCLA Br. at 23, 25–27, 39–40 (citing declarations and accompanying exhibits not presented at trial). The District Court properly denied UCLA a “do over” after the University “waited [until after trial] to mount a defense.” 1-ER-9. This Court should not consider untested evidence that UCLA intentionally withheld until after trial. *Gonzalez v. United States*, 814 F.3d 1022, 1031 (9th Cir. 2016) (“Absent extraordinary circumstances, [the appellate court] generally do[es] not permit parties to supplement the record on appeal.”). Because UCLA cannot show any error by the District Court, this Court should affirm.

B. The District Court's Permanent Injunction Binds UCLA Because It Is in Privity with the Department of Veterans Affairs.

UCLA argues that its strategic refusal to participate as a party below prevents the District Court from enjoining VA, an existing party, from effectuating a lease that the

District Court has found unlawful and void. UCLA Br. at 25. That is not the law. *See, e.g., Vuitton et Fils S. A. v. Carousel Handbags*, 592 F.2d 126, 129 (2d Cir. 1979) (“A court of equity cannot, of course, bind the world at large through a broadly worded injunction. Nevertheless, American jurisprudence has rejected [the] view that only a party to the suit may be bound by a decree.”). Rather, longstanding common law jurisprudence establishes that an “injunction **not only binds the parties defendant but also those identified with them in interest, in ‘privity’ with them**, represented by them or subject to their control.” *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 14 (1945) (emphasis added). This ensures “that defendants may not nullify a decree by carrying out prohibited acts” through others with whom they are in privity, even though the latter “were not parties to the original proceeding.” *Id.*

Rule 65 of the Federal Rules of Civil Procedure codifies this principle. *Regal Knitwear*, 324 U.S. at 13–14. Contrary to UCLA’s categorical assertion that a district court may only bind “the parties before it,” UCLA Br. at 25, Rule 65(d)(2) expressly enumerates *non-parties* against whom an injunction may be enforced. *See* Fed. R. Civ. P. 65(d)(2) (listing—in addition to (A) “the parties”—(B) “the parties’ officers, agents, servants, employees, and attorneys;” and (C) “other persons who are in active concert or participation with” persons in the former categories). Federal courts interpret this enumeration as synonymous with privity. Charles Alan Wright & Arthur R. Miller, *Federal Prac. & Proc.* § 2956 (3d ed., June 2024). As counterparties to the 2016 Lease, UCLA and VA are, by definition, in privity. Privity, *Black’s Law Dictionary* (12th ed. 2024)

("[t]he connection or relationship between two parties, each having a legally recognized interest in the same subject matter (such as a transaction, proceeding, or piece of property); mutuality of interest").

Apart from being in privity or otherwise identified in interest with the party enjoined, the only other requirement for a non-party to be bound is "actual notice." Fed. R. Civ. P. 65(d)(2). UCLA asserts that such notice requires "service of an amended pleading on the University" UCLA Br. at 28. But Rule 65 does not say that. Instead, it provides for enforcement based on the nonparty's "**actual** notice" of the injunction "by personal service **or otherwise.**" Fed. R. Civ. P. 65(d)(2) (emphases added); *cf., e.g., Reich v. United States*, 239 F.2d 134, 137 (1st Cir. 1956) ("no doubt" that nonparty "had actual knowledge of the injunction" where "[h]e was mailed a copy of that injunction when it was issued" and "read the injunction when he received it"); *Hill v. United States*, 33 F.2d 489, 490 (8th Cir. 1929) ("[T]o render a person amenable to an injunction, it is neither necessary that he should have been a party to the suit in which the injunction was issued, nor to have been actually served with a copy of it, so long as he appears to have had actual notice."). As reviewed above, UCLA cannot disclaim actual knowledge of either (i) the litigation below, even from its outset,⁸ or (ii) the District Court's injunctive orders issued therein.

⁸ UCLA was referred to in the title of CNN's November 16, 2022, article about the filing of this case, for which its spokesperson gave the quote: "UCLA is in full compliance with the West Los Angeles Leasing Act of 2016, as indicated in the Department of Veteran Affairs Office of the Inspector General's audit of September 2021." Nick Watt, *Veterans sue VA demanding land be used for homes and not*

Most importantly, UCLA admits that it had actual, advance notice of the District Court’s September 25, 2024, hearing on injunctive relief, including the Court’s planned discussion of “[e]xit strategies for the leaseholds with UCLA and the Brentwood School.” 2-SER-0327; UCLA Br. at 17. Because of that notice, UCLA’s Interim Chancellor and its counsel attended the hearing and argued their position before the District Court. *See* 5-SER-1238–41; 6-SER-1483–1505. Even under its own citations, therefore, UCLA was afforded ample due process: it had notice and an opportunity to be heard, not only in the litigation generally but also at the injunctive relief stage specifically. *See* UCLA Br. at 26 (quoting *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.”)); *id.* at 26 (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (“The fundamental requisite of due process of law is the opportunity to be heard.”)).

UCLA’s remaining argument—that Plaintiffs’ amendment of the pleadings to conform to the evidence at trial violated Rule 15 because UCLA was not served and given “10 days to answer”—rests on its fundamental misunderstanding of that Rule. Unlike *Nelson v. Adams USA, Inc.*, 529 U.S. 460 (2000), the case on which UCLA primarily relies, Plaintiffs amended the pleadings not to add UCLA as a defendant, but

rented out to a college and private school, CNN (Nov. 16, 2022), <https://www.cnn.com/2022/11/16/us/la-veterans-sue-va-over-housing/>.

to add the claim that the *Government's* lease with UCLA—as demonstrated at trial—violated the *Government's* fiduciary duty to disabled veterans and the requirements of the Leasing Act. 6-ER-1191 (“[W]e now seek to amend the complaint to conform to the extensive proof elicited at trial about the illegality of the UCLA lease.”); 5-ER-1220 (“We are asking the Court to declare the land use agreements with Brentwood, with UCLA, with SafetyPark, and with Bridgeland to be illegal.”).

UCLA acknowledges as much. UCLA Br. at 22 (Plaintiffs requested “**to add a new claim** against the University’s [2016] lease.”) (emphasis added). And the District Court so found. *Powers*, 2024 WL 4100866, at *31 (“[T]he Court holds that the VA’s lease with UCLA violates the agency’s fiduciary duty to veterans, because UCLA’s main or predominant focus under the lease is not the provision of services to veterans.”). It permanently enjoined the Government “from executing and maintaining any land use agreement, including those identified by this Order, that does not principally benefit veterans and their families pursuant to WLALA and its 2021 Amendment.” 5-ER-1041; 1-ER-22–23. As UCLA admits, the District Court did not add UCLA as a party. UCLA Br. at 26 (“the University was never added as a party”). Therefore, *Nelson*—which construes a prior version of Rule 15(a) and governs situations in which “a court grants leave to amend **to add an adverse party** after the time for responding to the original pleading has lapsed”—is inapposite. 529 U.S. at 466–67 (emphasis added); *compare* UCLA Br. at 26 (quoting *Nelson* to argue that Rule 15 “assumes an amended pleading will be filed and anticipates service of that pleading’ **on any newly added party**, and

assumes **any newly added party** will be given ten days to answer and thereafter defend against the new claim” (emphases added)), *with* Fed. R. Civ. P. 15(b)(2) (allowing party to “move—at any time, even after judgment—to amend the pleadings to conform them to the evidence and **to raise an unpleaded issue**”) (emphasis added).

C. The District Court’s Relief with Respect to UCLA’s Lease Was Proper.

The District Court was well within its authority to void the 2016 Lease—which violated the express terms of the Leasing Act—and issue a modified order restricting UCLA’s access to two parking lots on its former leasehold.⁹ *See* 1-SER-0004; *see also Kemp-Booth Co. v. Calvin*, 84 F.2d 377, 381 (9th Cir. 1936) (property owner’s leases will generally be upheld unless they “**violate . . . [a] provision of express statute, or . . . run contrary to some rule of public policy**”) (emphasis added). The District Court also acted properly to ensure that UCLA’s prior lease violations would not recur, explaining that UCLA *may* lose access to the baseball facilities after July 4, 2025, if the Parties are unable to reach a settlement that complies with the West LA Leasing Act[.]” 1-SER-004 (emphasis added); *see also S.E.C. v. R.G. Reynolds Enterprises, Inc.*, 952 F.2d 1125, 1136 (9th Cir. 1991) (injunction is proper to avoid “future violations” of the law). In addition, the District Court made specific findings that the land on which UCLA’s

⁹ As detailed *supra*, UCLA may access its baseball facilities until at least July 4, 2025, and it will retain that access so long as it “reach[es] a new agreement with VA” that—unlike the 2016 Lease—complies with the Leasing Act. *See* 1-SER-0004.

stadium and practice field sit “may be needed in the future if VA continues to argue, contrary to the Court’s findings, that there is insufficient space available for veteran housing on the Campus.” 1-SER-0004.

UCLA’s first argument—that the District Court usurped the VA Secretary’s discretion—has no basis. UCLA’s allusion to remedies under the Administrative Procedure Act, UCLA Br. at 37, is inapposite because the District Court voided the university’s lease under a charitable trust theory, *Powers*, 2024 WL 4100866, at *41 n.15. And UCLA’s claim that “the 2016 Leasing Act delegated the authority to determine the lease’s compliance to the VA Secretary” finds no support in the Leasing Act’s text. *See* UCLA Br. at 38; Pub. L. No. 114-226 § 2(b)(3). That the Leasing Act requires the Regents to provide additional services and support “to an extent an in a manner that the Secretary considers appropriate” in no way confers exclusive authority on the Secretary to determine the *legality* of the lease, which was the issue in front of the District Court. *See* UCLA Br. at 38; § 2(b)(3)(C); *Powers*, 2024 WL 4100866, at *68 (holding that “Federal Defendants’ agreement with the University of California Los Angeles constitutes a breach of their fiduciary duty[.]”). Moreover, that the Regents shall provide “additional services and support” is only *one* of the Act’s *four* requirements for a lease with UCLA; no other requirement involves the Secretary’s discretion. *See* § 2(b)(3)(A–D).¹⁰

¹⁰ Nor can UCLA argue that VA is owed deference in its interpretation of the statute. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 394 (2024).

UCLA’s second argument—that the District Court failed to balance UCLA’s “hardships” or assess “any of the established criteria” for issuing injunctive relief, UCLA Br. at 38–39—is demonstrably false. In multiple hearings, the District Court heard and responded to UCLA’s arguments about its purported harms from an injunction. *See, e.g.*, 1-ER-81–82 (acknowledging UCLA’s argument that its “baseball program” has been “disrupt[ed]” by the September 25 injunction); 5-ER-908–10 (acknowledging UCLA’s arguments regarding “convenience” to undergraduates of proximity to baseball facilities). The District Court’s engagement with UCLA’s arguments, and its resultant modification of its injunction to permit UCLA continued access to its baseball facilities, was more than adequate. *See Westside Prop. Owners v. Schlesinger*, 597 F.2d 1214, 1216 n.3 (9th Cir. 1979) (district court need not “address explicitly every point raised by the parties”).

UCLA’s final argument—that “a leasehold grants a tenant an interest in land that cannot be summarily terminated based merely on a violation and without the opportunity to cure,” UCLA Br. at 39—fails because the District Court is obviously neither UCLA’s landlord nor bound by the terms of its lease with VA. *See* 10-ER-2152 (providing UCLA an opportunity to cure *with the VA*). Nor does a tenant’s interest displace the District Court’s power to void a lease as unlawful. Indeed, UCLA concedes that the state law it cites “likely does not apply to this federal agency lease.” UCLA Br. at 40.

CONCLUSION

This Court should affirm the District Court's denial of UCLA's motion to intervene and rule that UCLA does not have standing to appeal the District Court's Judgment. If this Court reaches UCLA's appeal of the District Court's Judgment, it should affirm the Judgment in full.

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Respectfully submitted,

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STATEMENT OF RELATED CASES

This case is related to the three other appeals that have been filed in the same case: Case Nos. 24-6576, -6578, -6888.

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I hereby certify this brief complies with Federal Rule of Appellate Procedure 27(d)(1)(E) because it has been prepared in 14-point Garamond, a proportionally spaced font, and that it complies with the type-volume limitation of Circuit Rules 27-1(1)(d) and 32-3(2) because it contains 9,889 words, according to Microsoft Word.

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