

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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

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

Appearances:	See Page 2
Deputy Clerk:	Karlen Dubon
Court Reporter:	Recorded; CourtSmart
Transcription Service:	JAMS Certified Transcription 16000 Ventura Boulevard #1010 Encino, California 91436 (661) 609-4528

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 APPEARANCES:

2

3 For the Plaintiffs: Robins Kaplan LLP
4 By: ROMAN M. SILBERFELD
2121 Avenue of the Stars, Suite 2800
Los Angeles, California 90067
5 (310) 552-0130
rsilberfeld@robinskaplan.com

6

7 Robins Kaplan LLP
By: TOMMY H. DU
2049 Century Park East, Suite 3400
8 Los Angeles, California 90067
(310) 552-0130
tdu@robinskaplan.com

9

10 Public Counsel
By: MARK D. ROSENBAUM
11 610 South Ardmore Avenue
Los Angeles, California 90005
12 (213) 385-2977
mrosenbaum@publiccounsel.org

13

14 For the Defendants: United States Department of Justice
Civil Division - Federal Programs Branch
15 By: BRAD P. ROSENBERG
1100 L Street N.W.
16 Washington, D.C. 20005
(202) 514-3374
brad.rosenberg@usdoj.gov

17

18 United States Department of Justice
Civil Division - Federal Programs Branch
19 By: TAYLOR N. PITZ
1100 L Street N.W.
20 Washington, D.C. 20005
(202) 305-5200
taylor.n.pitz@usdoj.gov

21

22 United States Department of Justice
Civil Division - Federal Programs Branch
23 By: CODY T. KNAPP
1100 L Street N.W.
24 Washington, D.C. 20005
(202) 532-5663
cody.t.knapp@usdoj.gov

25

1 APPEARANCES:
2 (Con't)

3 For the Defendants: United States Department of Justice
4 Civil Division
5 By: JODY D. LOWENSTEIN
6 1100 L Street N.W.
7 Washington, D.C. 20005
8 (202) 598-9280
9 jody.d.lowenstein@usdoj.gov

7 United States Department of Justice
8 Civil Division
9 By: CARLOTTA P. WELLS
10 1100 L Street N.W.
11 Washington, D.C. 20005
12 (202) 307-0340
13 carlotta.wells@usdoj.gov

11 United States Department of Justice
12 Civil Division
13 By: AGBEKO C. PETTY
14 1100 L Street N.W.
15 Washington, D.C. 20005
16 (202) 616-8470
17 agbeko.c.petty@usdoj.gov

15
16 For the Intervenor: Elkins Kalt Weintraub Reuben Gartside
17 LLP
18 By: ERNEST J. GUADIANA
19 10345 West Olympic Boulevard,
20 Los Angeles, California 90064
21 (310) 746-4499
22 eguadiana@elkinskalt.com
23
24
25

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

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

6 Is it operating?

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

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

11 THE COURT: Pleasure.

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

14 THE COURT: Pleasure.

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

17 THE COURT: Pleasure.

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

21 THE COURT: Pleasure.

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

24 THE COURT: Nice seeing you.

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

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

3 THE COURT: All right. Please?

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

6 THE COURT: Nice seeing you.

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

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

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

15 THE COURT: Oh, my apologies.

16 MR. GUADIANA: I'm here too.

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

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

25 So, Counsel, your motion?

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

3 THE COURT: Good morning.

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

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

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

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

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

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

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

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

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

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

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

1 There is -- pardon me.

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

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

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

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

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

19 THE COURT: Okay.

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

21 THE COURT: All right. Thank you.

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

24 TAYLOR PITZ: Good morning, Your Honor.

25 THE COURT: Good morning.

1 MS. PITZ: May it please the Court.

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

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

6 MS. PITZ: Is that better?

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

8 MS. PITZ: Okay. Thank you.

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

11 MS. PITZ: Okay.

12 THE COURT: Okay. Thank you.

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

14 Good morning.

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

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

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

15 (Pause.)

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

1 capable of being redressed by a common injunction here.

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

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

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

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

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

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

24 (Pause.)

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

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

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

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

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

3 (Pause.)

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

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

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

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

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

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

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

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

6 THE COURT: All right. Thank you.

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

19 MR. SILBERFELD: Thank you, Your Honor.

20 MR. ROSENBERG: Thank you, Your Honor.

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

22

23 AFTER RECESS

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

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

4 MR. GUADIANA: No, Your Honor.

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

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

13 THE COURT: Acceptable to all parties?

14 MS. PITZ: Acceptable to us.

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

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

19 THE COURT: All right.

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

21 MS. PITZ: Thank you, Your Honor.

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

25 MS. PITZ: Okay.

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

5 THE COURT: Okay.

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

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

12 MS. PITZ: Thank you.

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

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

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

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

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

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

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

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

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

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

15 And if Your Honor has no other questions --

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

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

22 MR. GUADIANA: No, Your Honor.

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

25 MR. SILBERFELD: Thank you, Your Honor.

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

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

7 (Court speaks with courthouse staff.)

8 THE COURT: Counsel, pardon the informality.

9 MR. SILBERFELD: Oh, no problem.

10 (Court speaks with courthouse staff.)

11 THE COURT: Okay. Counsel, please continue.

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

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

21 THE COURT: Excuse me.

22 (Court speaks with courthouse staff.)

23 THE COURT: Thank you, Counsel.

24 MR. SILBERFELD: Sure.

25 (Court speaks with courthouse staff.)

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

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

6 MR. SILBERFELD: Sure.

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

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

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

20 MR. SILBERFELD: Sure.

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

23 THE COURT: The what?

24 MR. SILBERFELD: "By Name" --

25 THE COURT: "By Name"?

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

2 THE COURT: Spell that for me.

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

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

6 MR. SILBERFELD: And then "List."

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

16 THE COURT: Just one moment.

17 MR. SILBERFELD: Sure.

18 (Court speaks with courthouse staff.)

19 THE COURT: Counsel, please?

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

25 And lastly, with regard to the argument about

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

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

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

17 (Court speaks with courthouse staff.)

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

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

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

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

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

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

19 (Pause.)

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

1 And take your time.

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

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

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

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

7 (Pause.)

8 THE COURT: Okay. Had enough time?

9 MR. ROSENBERG: Yes.

10 THE COURT: Please?

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

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

15 MS. PITZ: Okay.

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

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

21 THE COURT: I see.

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

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

1 THE COURT: Excuse me. LAHSA does?

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

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

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

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

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

16 MS. PITZ: I believe my --

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

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

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

1 THE COURT: Sure.

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

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

7 THE COURT: Sure.

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

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

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

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

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

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

20 THE COURT: A little louder.

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

25 THE COURT: So Federal Government is relying upon

1 on local government?

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

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

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

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

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

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

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

21 THE COURT: What is our targeted list?

22 MR. KNAPP: Veterans experiencing homelessness.

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

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

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

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

6 MR. KNAPP: Correct. Yes.

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

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

17 THE COURT: Okay.

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

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

1 because LAHSA is servicing a larger circle of veterans.

2 THE COURT: Okay.

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

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

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

19 THE COURT: Okay.

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

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

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

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

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

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

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

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

24 I want to hear from the plaintiffs.

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

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

3 THE COURT: Yeah.

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

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

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

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

11 Counsel, your response?

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

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

16 THE COURT: No. Please?

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

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

23 MS. PITZ: Oh, sure.

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

1 (Counsel confer.)

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

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

6 THE COURT: Right.

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

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

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

13 MS. PITZ: Yes.

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

16 MR. SILBERFELD: Yes.

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

19 MR. SILBERFELD: Yes.

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

22 MR. SILBERFELD: No longer.

23 THE COURT: -- by stipulation.

24 Joseph Fields -- still a plaintiff?

25 MR. SILBERFELD: Yes, Your Honor.

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

2 MR. SILBERFELD: Yes.

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

4 MR. SILBERFELD: Yes.

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

6 MR. SILBERFELD: Yes.

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

9 MR. SILBERFELD: Yes.

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

11 MR. SILBERFELD: Yes.

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

13 MR. SILBERFELD: Yes.

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

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

22 Richard -- Denis Richard McDonough?

23 MS. PITZ: Yes. Still a defendant.

24 THE COURT: What about him?

25 (Pause.)

1 THE COURT: He's still?

2 MS. PITZ: I'm sorry?

3 THE COURT: Still a defendant?

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

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

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

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

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

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

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

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

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

3 THE COURT: Okay.

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

8 THE COURT: I understand.

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

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

13 MR. ROSENBERG: Robert Merchant.

14 THE COURT: Spell it.

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

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

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

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

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

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

22 UNIDENTIFIED SPEAKER: Yes.

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

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

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

1 MR. ROSENBERG: C-h.

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

3 MR. ROSENBERG: Yes. Cat.

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

5 MR. ROSENBERG: Yes.

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

8 MR. ROSENBERG: Yes.

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

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

14 THE COURT: Okay.

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

19 THE COURT: Okay.

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

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

23 MR. ROSENBERG: He has not been deposed.

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

1 Merchant is now going to get deposed.

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

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

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

7 THE COURT: Just step over and ask him.

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

10 THE COURT: Well --

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

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

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

16 THE COURT: Are you going to depose Merchant?

17 MR. SILBERFELD: Well --

18 THE COURT: Are you going to depose Merchant?

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

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

24 MR. SILBERFELD: I don't know.

25 THE COURT: Okay. Then contact my special masters

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

3 MR. SILBERFELD: Sure.

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

10 MR. ROSENBERG: And --

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

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

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

17 MR. ROSENBERG: Yes.

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

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

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

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

25 THE COURT: Okay.

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

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

5 MR. ROSENBERG: Adrienne --

6 THE COURT: Spell it for me.

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

8 THE COURT: New word "me"?

9 MR. ROSENBERG: Yeah. Two Ns.

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

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

12 THE COURT: -- i-a --

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

14 THE COURT: -- n-n --

15 MR. ROSENBERG: E.

16 THE COURT: Okay.

17 MR. ROSENBERG: As in "excellent."

18 THE COURT: Excellent. Right.

19 MR. ROSENBERG: Todman.

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

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

1 pastures --

2 THE COURT: Okay.

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

5 THE COURT: All right.

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

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

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

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

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

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

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

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

23 (Pause.)

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

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

5 (Pause.)

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

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

12 (Pause.)

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

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

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

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

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

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

4 (Pause.)

5 (Court confers with clerk.)

6 (Pause.)

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

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

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

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

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

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

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

25 (Pause.)

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

3 THE COURT: Okay. Thank you so much.

4 (Court confers with clerk.)

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

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

9 THE COURT: A substitution. Thank you.

10 (Court confers with clerk.)

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

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

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

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

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

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

10 And who do you believe is missing?

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

12 THE COURT: Well, it's right on line 9 and 10.

13 National Veterans Foundation as class representatives.

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

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

18 MR. SILBERFELD: Line 9 of --

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

21 MR. ROSENBERG: Page 15 --

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

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

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

3 THE COURT: And I've done that.

4 MR. SILBERFELD: Thank you.

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

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

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

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

22

23 AFTER RECESS

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

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

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

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

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

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

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

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

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

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

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

5 MR. ROSENBERG: Understood.

6 THE COURT: Okay.

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

10 SILBERFELD: Nothing further from the plaintiff.

11 THE COURT: Okay.

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

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

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

17 THE COURT: Thank you.

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

19 ///

20 ///

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

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

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

May 2, 2024
Date