713 F.Supp.3d 695
United States District Court, C.D. California, Southern Division.

Jeffrey POWERS, et al., Plaintiffs,
v.
Denis Richard MCDONOUGH, in his official capacity as Secretary of Veterans Affairs; et al., Defendants.

Case No. SA 2:22-cv-08357-DOC-JEMx
|
Signed December 14, 2023

Synopsis

Background: Homeless veterans with disabilities filed putative class action against Department of Veterans Affairs (VA), Department of Housing and Urban Development (HUD), and Housing Authority of the City of Los Angeles (HACLA), claiming disability discrimination and denial of meaningful access in violation of Rehabilitation Act, breach of duty as trustee of charitable trust, and improper land deals executed in violation of Administrative Procedure Act (APA) and West Los Angeles Leasing Act (WLALA), and seeking accounting for funds, after government allegedly breached settlement agreement that would lead to veterans being housed on grounds of historic veterans home that had fallen into disuse, and then portions of those grounds were leased out to private entities. Defendants moved to dismiss for lack of subject matter jurisdiction and for failure to state claim.

Holdings: The District Court, David O. Carter, J., held that:

Rehabilitation Act claims were not jurisdictionally barred under Veterans Judicial Review Act (VJRA);

Rehabilitation Act discrimination and denial of access claims were plausibly alleged;

Rehabilitation Act discrimination claim on behalf of subclass was plausibly alleged;

breach of fiduciary duty as trustee of charitable trust claim was plausibly alleged;

improper land deals claim was plausibly alleged with respect to school lease;

improper land deals claim was plausibly alleged with respect to parking lot lease;

improper land deals claim was plausibly alleged with respect to oil and gas drilling license; and

improper land deals claim was plausibly alleged with respect to easements.

Motion denied.

Procedural Posture(s): Motion to Dismiss for Lack of Subject Matter Jurisdiction; Motion to Dismiss for Failure to State a Claim.

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ORDER DENYING DEFENDANTS' MOTIONS TO DISMISS [37, 49, 51]

DAVID O. CARTER, UNITED STATES DISTRICT JUDGE

***703 INTRODUCTION**

Over a decade ago, unhoused veterans sued the government seeking shelter and services. The parties reached a settlement agreement that would lead to veterans being housed at the West Los Angeles VA, a historic home for veterans that had fallen into disuse.

As Plaintiffs stated:

> "Unfortunately, counsel for the prior plaintiffs did not insist on enforceability of the prior settlement agreement on the belief that the VA would act in good faith to comply with its terms and that court enforcement would not be necessary against the United States government, to whom they have given so much and from whom they had received such sacred promises. Tragically, this trust in the VA to keep its word was [ ] misplaced."[1]

Plaintiffs claim that the government's breach of the settlement agreement is just one more in a long line of broken promises to veterans. In this lawsuit, Plaintiffs renew their demand for the services and shelter once promised. The government responds that this Court lacks jurisdiction to hear this case, and that it owes no fiduciary duty to veterans.

BACKGROUND

Los Angeles is the homeless veterans capital of the United States. In 2022, 3,458 unhoused veterans lived in the city, approximately 10% of the national total.[2] Unhoused veterans in Los Angeles are disproportionately Black, with 32% identifying as Black/African American, compared with 9% of Los Angeles County's overall population.[3] Nationwide, veterans are more likely to be unhoused than other groups—in 2016, a national survey of homelessness showed that veterans comprised 9.2% of all homeless adults, although they are only 6.9% of Americans are veterans.[4]

The number of unhoused veterans in Los Angeles is particularly shocking, even ***704** in the larger context of the area's ongoing housing and homelessness crises, because the city boasts a unique property that was historically dedicated to housing veterans with disabilities. The VA's West Los Angeles Medical Center & Community Living Center Grounds ("WLA Grounds" or "Grounds") has a long history. These grounds were originally gifted to the United States to be a home for wounded veterans returning from the Civil War. For years, a thriving community of veterans live on the campus, with around 4,000 veterans living there at a time in the 1920s. Decades later, however, the grounds fell into disuse in the wake of the Vietnam War.[5] During the 1960s and 1970s, as disabled veterans were moved out, commercial interests moved in. The VA admitted in their 2022 Master Plan for the Grounds:

> "In the 70s, residential use of the campus declined, and the West LA VA Campus began the practice of leasing land on the campus to private commercial interests, including the UCLA baseball stadium, the Brentwood School athletic complex, Marriott Hotel laundry, Enterprise car rentals, and a rare bird sanctuary ... The West LA VA Campus generated millions of dollars from this leasing policy that provided little direct benefit to Veterans."[6]

Once private interests secured their foothold on the VA's 388 acres of lucrative real estate, disabled veterans struggled to regain access to housing on the Grounds. In 1988, for example, a proposal to house homeless veterans and their families in trailers on the Grounds was dropped after several homeowners' groups mobilized campaigns against the plan.[7] "We know there is a homeless veteran problem out there, but the Veterans Administration property is not the place to solve it," the president of the Brentwood Homeowners Association commented at the time.[8]

More recently, in 2011, ten unhoused veterans with severe disabilities sued the VA for its failure to provide housing on the West LA Grounds. In January 2015, the plaintiffs entered into an agreement with the VA under which the VA agreed to draft and implement a Master Plan to

provide housing and supportive services for veterans. Pursuant to the Master Plan, the VA agreed to build 1,200 Permanent Supportive Housing units for veterans on the Grounds, 770 of which were to be completed by 2022. FAC ¶ 17.

In 2021, however, the VA Office of Inspector General ("OIG") reported that the VA had not constructed a single new unit of Permanent Supportive Housing pursuant to the settlement agreement. OIG reported that the "VA envisions all phases of construction will be completed in the next 17 years." *See* Ex. 7 to VA Mot. ("2021 OIG Report") (Dkt. 37-9) at 17.

Plaintiffs in the present case are part of the decades-long fight of homeless veterans to secure housing on the land originally donated to the United States for their benefit. The individual plaintiffs are unhoused veterans who range in age from 36 to 85 years old. FAC ¶¶ 40-126. The trauma that Plaintiffs experienced left them with lasting symptoms of mental illness upon their return home. These include major depressive disorder, PTSD, panic attacks, nightmares, substance abuse, and ***705** difficulty sleeping. *Id.* ¶¶ 40-126. Plaintiffs also have ongoing physical disabilities as a result of their service, such as cerebral atrophy, knee pain, back pain, hearing problems, nerve paralysis, spinal damage, arthritis, dislocated hips, and migraines. *Id.*

Since their discharges, Plaintiffs have experienced homelessness and faced distressing conditions. They have lived on pieces of cardboard on Los Angeles sidewalks, in tents at the WLA Grounds, in cars, and in tiny sheds. *Id.* Many resided for a time in tents on what was known as "Veterans Row," a community of unhoused veterans that lived outside the WLA Grounds until law enforcement cleared out the area in November 2021. *Id.* After Veterans Row was cleared, many of its residents were moved into tiny sheds. *Id.* When some of these burned down in September 2022, several Plaintiffs lost all their belongings along with their shelter. *Id.* Plaintiff Fields reports he has seen more people die on the sidewalks of Los Angeles than during his time in the Army. FAC ¶ 80.

The VA says it will build more housing, but it needs additional time. At the last hearing, the VA indicated that it would build 1,400 units instead of the 1,200 pledged in the original Master Plan. VA Defendants stated that all units would not be completed, however, until 2030. *See* Transcript of September 18, 2023 Hearing ("Oral Arg. Tr.") (Dkt. 82) at 38:18-20. The VA's promise would result in twenty-five additional units for each year of delay. This representation appears to be inadequate to keep pace with the increasing numbers of homeless veterans. The population of homeless veterans in the area has tripled since the settlement agreement in 2015. *See id.* at 60:11-15. In the single year since Plaintiffs filed this suit, the number of homeless veterans in the Los Angeles area has increased by nearly 600. *See id.* According to the VA's own data, homelessness exposes veterans to a greater risk of premature death.[9] Plaintiffs fear that the VA's response is too little too late. *See* Oral Arg. Tr. at 60:16-62:17. With this urgency in mind, Plaintiffs renew their demand for permanent housing for disabled veterans at the West LA Grounds.

I. FACTS

The following facts are taken from Plaintiffs' First Amended Complaint.

A. History of the West Los Angeles (WLA) Grounds

In 1865, Congress incorporated the National Home for Disabled Volunteer Soldiers ("National Home") to operate branch homes throughout the nation for soldiers who had been honorably discharged. *Id.* ¶ 190. In March 1888, Senator John P. Jones and Arcadia B. DeBaker donated by deed 300 acres of land in Los Angeles expressly "for the purpose of such branch Home for Disabled Veterans Soldiers to be thereon so located, established, constructed and permanently maintained." *Id.* ¶ 191.

The Pacific Branch of the National Home ("Pacific Branch Home") opened in 1888. For about 80 years, the VA's predecessors operated a Pacific Branch Home at this site in keeping with the 1888 Deed, providing a permanent home for tens of thousands of veterans with disabilities who resided on the Grounds and accessed necessary and therapeutic services there. *Id.* ¶ 192. Consistent with the intent of providing a home for soldiers, the grounds at the Pacific Branch Home—estimated to span between 600 and 700 acres at its inception—were transformed into a beautiful, park-like setting. *Id.* ¶ 193. In addition to ***706** ensuring residents' access to housing, food and medical care, the Pacific Branch Home also developed the Grounds to provide educational and vocational activities for the veteran residents. With a substantial library, vegetable gardens, orchards, and livestock all tended to by veterans, extensive athletic and recreational facilities, and activities including a baseball team, daily band performances, lectures, movie screenings, and classes, the Grounds

provided a restorative and lively community space for veterans returning from the trauma of war. *Id.* ¶ 195-196. By 1922, approximately 4,000 veterans were provided permanent housing at the Pacific Branch Home. *Id.* ¶ 197.

In 1930, Congress consolidated the National Home with other veterans' programs in the newly established Veterans Administration, the immediate predecessor to the Department of Veterans Affairs (what is today commonly known as the VA). *Id.* ¶ 198. Accordingly, control over and title to the various branch homes, including the Pacific Branch Home, transferred to the Veterans Administration. *Id*. Plaintiffs aver that, following the transfer, the Veterans Administration executed various land transfers[10] that reduced the total Grounds, which the VA is now statutorily prohibited from reducing further. *Id.* ¶ 199.

While new construction took place during the 1940s, the Veterans Administration stopped accepting new residents at the WLA Grounds by the 1960s and 1970s as Vietnam veterans returned home. *Id.* ¶ 202. During these decades, affluent communities bordering the Grounds publicly complained to the VA about the nuisance of unruly Vietnam veterans residing at the campus.[11] The once-thriving neighborhood that used to house 4,000 veterans fell into squalor and disuse. *Id.* ¶ 201-02. Conditions reached a crisis in 1970, when several doctors told a U.S. Senate subcommittee about the "filthy" and "medieval" conditions at the medical facilities on the Grounds. *Id.* ¶ 203. Patients often died there unattended from "breathing in their own secretions." *Id.* The *Los Angeles Times* reported that the facility had fallen into decay, with creaky floors, blown-out windows, shingles peeling from the roof, plaster falling off the walls, mounting filth, and rusting sprinklers. *Id.*

Over the past fifty years, the Grounds have never returned to fulfilling their original purpose. According to Plaintiffs, many of the more than 100 buildings on the WLA Grounds are still vacant, closed, or underutilized, with virtually no or minimal permanent supportive housing available to veterans with disabilities. *Id.* ¶ 205.

B. Veterans Health Administration (VHA) Benefits

The Veterans Health Administration ("VHA") within the VA is tasked with providing "a complete medical and hospital service for the medical care and treatment of veterans ....". *Id.* ¶ 210. The benefits package offered through VHA includes outpatient medical, surgical, and mental healthcare; inpatient hospital, medical, surgical, and mental healthcare; prescription drug coverage; emergency care; substance ***707** abuse treatment, and other services. VHA is required to provide preventive and primary care, acute hospital care, mental health services, specialty care, and long-term care, which includes residential treatment and housing services. *Id.* ¶ 211.

VA Greater Los Angeles Healthcare System ("VAGLAHS") is the VA healthcare system that serves all or parts of Los Angeles County, Ventura County, Kern County, Santa Barbara County, and San Luis Obispo County. *Id.* ¶ 210. According to Plaintiffs, VAGLAHS primarily administers benefits to veterans in the area at the VA Greater Los Angeles Medical Center located on the WLA Grounds. Plaintiffs assert this center "offers 24/7 services, including inpatient and outpatient treatment for mental health conditions and short-term residential treatment for substance use disorders." *Id.* ¶ 212. By contrast to the extensive services offered on the WLA Grounds, "VAGLAHS's facilities outside the WLA Grounds provide only outpatient services and are open only during regular business hours and only on weekdays." *Id.* ¶ 216.

Plaintiffs contend that, due to their disabilities, they require housing on or near the WLA Grounds to meaningfully make use of the services provided there. *Id.* ¶ 217. Plaintiffs state that given their disabilities, the size of Los Angeles County, and the limited public transportation options to West LA, getting to the WLA Grounds is an almost impossible task for veterans with Serious Mental Illness or Traumatic Brain Injuries. *Id.*

C. Current Housing Programs on the West Los Angeles (WLA) Grounds

Plaintiffs assert that in contrast to the original purpose of the Grounds and its historical use, today "virtually no permanent housing is available to veterans with disabilities on the WLA Grounds." *Id.* ¶ 205. Only one building on the WLA Grounds—Building 209—provides any permanent housing for veterans with disabilities. *Id.* ¶ 234. Building 209 contains 54 housing units for veterans. *Id.* "Despite having committed in 2015 to create 1,200 units, including 770 units by 2022, the VA only signed a lease to develop 900 of those units in July of 2022 .... [T]he VA expects to have only 182 units completed in the next five years and 885 units in up to ten years. 352 remaining units are not expected until over 11 years after 2022." *Id.* ¶ 263. At the hearing on September 18, 2023, Federal Defendants represented that the pace of construction has recently increased. At that time, there

were 233 completed units, with 198 veterans occupying the units. Oral Arg. Tr. 12:3, 98:14-15.

Plaintiffs allege that VA Defendants erroneously maintain that they do not have the ability to build permanent housing for homeless veterans with disabilities. *Id.* ¶ 218-242. Instead, they provide limited numbers of temporary, institutional shelters and contract with third-party developers to build income-restricted housing insufficient to meet the needs of the veterans they exist to serve. *Id.*

1. VA Greater Los Angeles Healthcare System (VAGLAHS) Temporary Shelters

VAGLAHS offers temporary shelter services on the WLA Grounds through 321-bed Domiciliary. *Id.* ¶ 218. This program provides temporary shelter beds, along with medical, psychiatric, and substance abuse treatment, and other therapeutic services. *Id.* ¶ 220. Plaintiffs assert that half the unhoused veterans who enter the Domiciliary are unable to transition into permanent housing at the end of their program and remain unhoused. *Id.*

According to Plaintiffs, in October 2021, the VA built approximately 140 8-by-8-foot ***708** tiny shed structures on the WLA Grounds, several of which burned in a fire in September 2022. *Id.* ¶ 221-22. The sheds are reserved for high-risk unhoused veterans, namely veterans with disabilities, but do not provide treatment or other services. *Id.* Tiny sheds do not have bathrooms or showers and do not allow residents to securely store their belongings. *Id.* ¶ 223.[12]

2. Third-Party Programs on the West Los Angeles (WLA) Grounds

In addition to the beds operated by the VA, several other institutional or temporary programs are operated by third parties on the WLA Grounds. *Id.* ¶ 227.

The Veterans Home of California, which opened on the WLA Grounds in 2010, is run by the State of California and provides nursing care to veterans over age 62. *Id.* ¶ 228. Additionally, New Directions, Inc. operates two residential programs on the WLA Grounds, serving 161 veterans for detoxification, transitional housing, and residential substance abuse and mental health services. *Id.* ¶ 229. Virtually all these beds mandate residents share rooms, which poses unique difficulties for veterans with PTSD whose symptoms may be aggravated when forced to share a room with strangers. *Id.* ¶ 230. The Salvation Army offers 40 units of temporary residential housing to homeless families (both of veterans and non-veterans) on the WLA Grounds that families can live in for a designated amount of time while they stabilize and acquire skills for independent living. *Id.* ¶ 232. Finally, Safe Parking LA operates a parking lot on the WLA Grounds for unhoused veterans who are living in their cars. Veterans accepted into the Safe Parking LA program can park in the lot overnight during set hours. Veterans have access to a portable (often filthy) toilet and are provided with one meal a day, but there are no shower or kitchen facilities. *Id.* ¶ 233.

3. Permanent Housing

Plaintiffs state that the VA and HUD's joint HUD-VASH program is VAGLAHS's only Permanent Supportive Housing program. *Id.* ¶ 236. It provides vouchers for rental assistance, along with VA case management and clinical services, to unhoused veterans. *Id.* Since 2008, Greater Los Angeles has been allocated approximately 9,800 of these veteran-specific, HUD-VASH vouchers, but only about 5,900 (60%) are in use. *Id.* Worsening the situation, Los Angeles' failure to use all its allocated vouchers results in the area receiving fewer vouchers in subsequent years. *Id.* In other words, poor administration increases the homelessness crisis among veterans each year.

The HUD-VASH program allocated 500 new vouchers for unhoused veterans in Los Angeles County in FY2020 and *none* in FY2021. *Id.* ¶ 237. Even for those veterans who receive vouchers, only around 60% of recipients in Greater Los Angeles are successful in finding housing, and often only after a long period of homelessness. *Id.* ¶ 237.

Plaintiffs assert that VA Defendant's policy of contracting with third-party developers to build Permanent Supportive Housing on the WLA Grounds has resulted in veterans who receive disability payments being deemed ineligible to apply for that housing. *Id.* ¶ 240-41. "In order to build affordable housing, developers apply for funding from multiple sources, including City, County, State and private financial institutions, each of which may have different eligibility restrictions tied to its funding. In order to be competitive for ***709** public funding, developers often agree to the most restrictive income limitations, generally the 30% [Area Median Income] AMI level." *Id.* For the purpose of calculating veteran eligibility, this

means that a veteran can only apply for specific housing if their "income" is at or below the corresponding level of AMI. Veterans' disability benefits are counted as income for this calculation. *Id.* ¶ 241.

Under current rates of disability compensation and AMI, a single veteran in Los Angeles with a 100% disability rating from the VA and no dependents generally receives more than 50%, closer to 60%, AMI. *Id.* ¶ 242. Certain veterans receive additional special monthly compensation above the basic disability compensation for certain severe loss categories, which increases their AMI level. *Id.* As a result, "the more disabled these veterans are and the more they require accessible VA services by the VA's own assessment, the less they are able to meaningfully access them." *Id.* ¶ 30.

D. Leases on the West Los Angeles (WLA) Grounds

Plaintiffs allege that VA Defendants "entered into illegal leases of property on the Grounds, thereby reducing available land for Permanent Supportive Housing and prioritizing non-veterans over veterans with disabilities." *Id.* ¶ 260. For decades, VAGLAHS has leased portions of the WLA Grounds to private entities and entered into a variety of land use agreements with both for-profit and not-for-profit entities. *Id.* ¶ 280. Congress enacted the West Los Angeles Leasing Act of 2016, Pub. L. 114-226 (Sept. 29, 2016) ("Leasing Act" or "WLALA") allowing non-VA entities to use the WLA Grounds only if the real property leases and land-use agreements "principally benefit veterans and their families." *Id.* ¶ 281. Pursuant to this act, the VA Office of Inspector General ("OIG") must submit a report to Congress "on all leases carried out at the Grounds and the management by the Department of the use of the land at the Grounds ...." *Id.* ¶ 281.

Congress' concern over the management of the WLA Grounds was well-placed. A fraud investigation led to the arrest and conviction of a VA contract officer who accepted $286,000 in cash bribes in the fourteen years between 2003 and 2017 from the owner of a parking lot business on the grounds. FAC n.225. The parking lot owner was sentenced to federal prison for almost six years for orchestrating the longstanding bribery scheme, in which he defrauded the VA out of more than $13 million. *Id.*

Despite the enactment of the WLALA and increased oversight in recent years, Plaintiffs assert that VA Defendants have continued the illegal leasing of the WLA Grounds, a conclusion shared by the VA's OIG. In 2018 the OIG issued a 120-page report, *VA's Management of Land Use under the West Los Angeles Leasing Act of 2016* ("2018 OIG Report"). The OIG found that "25 of 40 of the land use agreements (63 percent) on the WLA Grounds were improper." *Id.* ¶ 282; Ex. 10 to VA Mot. (Dkt. 37-12). Although the VA corrected some noncompliant leases, some remain—in a subsequent 2021 report ("2021 OIG Report"), the OIG identified seven land-use agreements that still did not comply with the WLALA. *Id.* ¶ 284. The OIG determined that "the agreements were not veteran focused or did not comply with other provisions of the act such as limits on VA's leasing authority under the act." *Id.* ¶ 19. The agreements the OIG found noncompliant include those allowing drilling to extract oil from neighboring land and a lease with the private Brentwood School for student athletic facilities. *Id.* ***710** ¶ 285.[13] Plaintiffs assert that as a result of these land use deals, portions of the WLA Grounds are unavailable to provide housing or services to veterans. *Id.* ¶ 288.

E. Plaintiffs' Claims

Plaintiffs assert seven claims against VA Defendants, individually and as class representatives: (1) discrimination in violation of section 504 of the Rehabilitation Act; (2) discrimination against the subclass in violation of section 504 of the Rehabilitation Act; (3) denial of meaningful access in violation of section 504 of the Rehabilitation Act; (4 & 5) breach of duty as trustee of a charitable trust; (6) improper land deals executed in violation of the Administrative Procedure Act ("APA") and the WLALA; and (7) accounting for funds. *See generally* FAC. Plaintiffs also assert the first three claims (the "Rehabilitation Act Claims") against Defendants HUD and HACLA. *Id.*

II. Procedural History

On November 15, 2022 Plaintiffs Jeffrey Powers, Deavin Sessom, Laurieann Wright, Samuel Castellanos, Joseph Fields, Lavon Johnson, Billy Edwards, Jessica Miles, Joshua Robert Petitt, Glenn Surrette, Naryan Stibbie, Does 1-2, and National Veterans Foundation (collectively, "Plaintiffs") filed suit against Defendants Denis Richard McDonough, in his official capacity as Secretary of Veterans' Affairs, Steven Braverman, in his official capacity as Acting Director, VA Greater Los Angeles Healthcare System, and Keith Harris, in his official

capacity as Senior Executive Homeless Agent, VA Greater Los Angeles Healthcare System (collectively, "VA Defendants").

On May 15, 2023, Plaintiffs filed a First Amended Complaint (Dkt. 33), individually and as class representatives, against VA Defendants and two additional Defendants, Marcia L. Fudge, in her official capacity, Secretary, Department of Housing and Urban Development ("HUD") (together with VA Defendants, "Federal Defendants") and Douglas Guthrie, in his official capacity, President, Housing Authority of the City of Los Angeles ("HACLA") (all collectively, "Defendants").

On May 30, 2023, VA Defendants moved to dismiss Plaintiffs' claims against them ("VA Motion" or "VA Mot.") (Dkt. 37). On June 16, 2023, Plaintiffs opposed ("VA Opposition" or "VA Opp'n") (Dkt. 45). On June 23, 2023, Defendant HUD moved to dismiss Plaintiffs' claims (Dkt. 49) ("HUD Motion" or "HUD Mot."). On July 7, 2023, Defendant HACLA moved to dismiss Plaintiffs' claims against them ("HACLA Motion" or "HACLA Mot.") (Dkt. 51). On August 7, 2023, VA Defendants submitted a consolidated Reply with Defendant HUD in support of their respective motions to dismiss ("Consolidated Reply") (Dkt. 57). On August 18, 2023, Plaintiffs opposed Defendant HUD's Motion to Dismiss ("HUD Opposition" or "HUD Opp'n") (Dkt. 62). On August 25, 2023, Plaintiffs opposed ("HACLA Opposition" or "HACLA Opp'n") (Dkt. 66). On September 1, 2023, Defendant HACLA submitted a Reply ("HACLA Reply") (Dkt. 68). Defendant HUD submitted a Reply on September 6, 2023 ("HUD Reply") (Dkt. 71).

On September 18, 2023, the Court held a hearing on the motions to dismiss. At the conclusion of the hearing, the Court called for supplemental briefing on the tentative ruling distributed at the hearing. On October 6, 2023, Federal Defendants, HACLA, ***711** and Plaintiffs submitted supplemental briefs (Dkts. 84, 87, 88). On October 16, 2023, the Court granted amicus Swords to Plowshares leave to file an amicus curiae brief (Dkt. 92). On October 26, 2023, the Court issued an order calling for amicus briefing by November 10, 2023 (Dkt. 95). On November 10, 2023, amicus Legal Scholars from leading academic institutions filed an amicus curiae brief (Dkt. 98).[14]

LEGAL STANDARD

I. Rule 12(b)(1)

A motion to dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure seeks dismissal of an entire action or a specific claim or claims for lack of subject matter jurisdiction. " 'Federal courts are courts of limited jurisdiction,' possessing 'only that power authorized by Constitution and statute.' " *Gunn v. Minton*, 568 U.S. 251, 257, 133 S.Ct. 1059, 185 L.Ed.2d 72 (2013) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994)). A court must presume "that a cause lies outside this limited jurisdiction and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkonen*, 511 U.S. at 377, 114 S.Ct. 1673. When the party asserting jurisdiction cannot meet that burden, "the court must dismiss the complaint." *Leeson v. Transamerica Disability Income Plan*, 671 F.3d 969, 975 n.12 (9th Cir. 2012) (quoting *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514, 126 S.Ct. 1235, 163 L.Ed.2d 1097 (2006)).

"A motion to dismiss for lack of subject matter jurisdiction may either attack the allegations of the complaint or may ... attack[ ] the existence of subject matter jurisdiction in fact." *Thornhill Publ'g Co. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979). In a Rule 12(b)(1) facial attack, the factual allegations of the complaint are presumed to be true, and the motion is granted only if the plaintiff fails to allege an element necessary for subject matter jurisdiction. *See Savage v. Glendale Union High Sch. Dist. No. 205*, 343 F.3d 1036, 1039 n.1 (9th Cir. 2003). When a Rule 12(b)(1) motion attacks the existence of subject matter jurisdiction in fact, no presumption of truthfulness attaches to the plaintiff's allegations for the purpose of determining jurisdiction. *Thornhill Publ'g*, 594 F.2d at 733. In addition, "the district court is not restricted to the face of the pleadings, but may review any evidence, such as affidavits and testimony, to resolve factual disputes concerning the existence of jurisdiction." *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988).

II. Rule 12(b)(6)

Under Federal Rule of Civil Procedure 12(b)(6), a complaint must be dismissed when a plaintiff's allegations fail to set forth a set of facts that, if true, would entitle the complainant to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 679, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555,

127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (holding that a claim must be facially plausible in order to survive a motion to dismiss). The pleadings must raise the right to relief beyond the speculative level; a plaintiff must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555, 127 S.Ct. 1955 (citing ***712** *Papasan v. Allain*, 478 U.S. 265, 286, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986)). On a motion to dismiss, a court accepts as true a plaintiff's well-pleaded factual allegations and construes all factual inferences in the light most favorable to the plaintiff. *See Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). A court is not, however, required to accept as true legal conclusions couched as factual allegations. *Iqbal*, 556 U.S. at 678, 129 S.Ct. 1937.

In evaluating a Rule 12(b)(6) motion, review is ordinarily limited to the contents of the complaint and material properly submitted with the complaint. *Van Buskirk v. Cable News Network, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002); *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1555, n.19 (9th Cir. 1990). Under the incorporation by reference doctrine, the court may also consider documents "whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading." *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994), *overruled on other grounds by Galbraith v. Cty. of Santa Clara*, 307 F.3d 1119, 1121 (9th Cir. 2002). The court may treat such a document as "part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6)." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

DISCUSSION

Federal Defendants move to dismiss Plaintiffs' claims both for failure to state a claim under Rule 12(b)(6) and for lack of subject matter jurisdiction under Rule 12(b)(1).

I. Rehabilitation Act Claims

Plaintiffs allege three violations of the Rehabilitation Act of 1973. That law is the "first major federal statute designed to protect the rights of" individuals with disabilities. *Fleming v. Yuma Reg'l Med. Ctr.*, 587 F.3d 938, 940 (9th Cir. 2009). It prohibits discrimination on the basis of disability in "any program or activity conducted by any Executive Agency," such as the VA and HUD. 29 U.S.C. § 794(a).

Plaintiffs allege that the VA's lack of Permanent Supportive Housing (PSH) at or near the VAGLAHS facilities violates the Rehabilitation Act. The experience of one of the Plaintiffs, Mr. Sessom, illustrates Plaintiffs' theory of discrimination. Mr. Sessom suffers from severe PTSD related to the sexual assault he experienced while in the Army. FAC ¶¶ 51-52. Since his discharge, Mr. Sessom has been intermittently homeless and often unable to find housing near the WLA Grounds where the VA administers his mental health treatment. *Id.* ¶¶ 54-58. When Mr. Sessom is in crisis and most in need of the VA, taking several buses to get across town to the VA "is simply not an option." *Id.* ¶ 58. Thus, Mr. Sessom faces a Hobson's choice: being housed and unable to access his benefits, or living on the streets near the WLA Grounds but able to access his treatment team. Because veterans without disability do not face similar obstacles in accessing their benefits, Plaintiffs allege that the absence of PSH constitutes disability discrimination.

A. Jurisdiction

Before addressing Plaintiffs' Rehabilitation Act claims on the merits, the Court must first consider the government's argument that this Court lacks jurisdiction. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998) (holding that a court must have jurisdiction to reach the merits). The government argues that this Court does not have jurisdiction for two reasons: (1) the ***713** Veterans Judicial Review Act ("VJRA") removed Plaintiffs' claims from this Court's jurisdiction, and (2) Plaintiffs lack standing or their claims have become moot. The Court considers each argument in turn.

1. The Veterans Judicial Review Act (VJRA)

Defendants argue that the VJRA, a 1988 law, strips this Court of jurisdiction to adjudicate Plaintiffs' Rehabilitation Act claims. Under the VA's interpretation, the VJRA would achieve near infinite reach, shielding the agency from judicial scrutiny of all sorts of discriminatory action. The VA responds that this judicial scrutiny is unnecessary because Plaintiffs could bring their discrimination complaints in a VA administrative proceeding. But even if Plaintiffs could bring their claims through the agency (they can't), it would be passing strange to allow the VA, alone among federal agencies, to

be the arbiter of whether it illegally and systemically discriminates.

a. Legal Background

Subject to exceptions not relevant here, Section 511 of the VJRA provides:

> "The Secretary shall decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans[.] [T]he decision of the Secretary as to any such question shall be final and conclusive and may not be reviewed by any other official or by any court, whether by an action in the nature of mandamus or otherwise."

38 U.S.C. § 511(a) ("Section 511").

To pursue claims for benefits covered by Section 511's jurisdictional bar, veterans must follow the VJRA's specialized adjudication procedures. A veteran must bring their claim to a regional office, which adjudicates their claim in the first instance. *Henderson ex. rel Henderson v. Shinseki*, 562 U.S. 428, 431, 131 S.Ct. 1197, 179 L.Ed.2d 159 (2011) (citing 38 U.S.C. §§ 7101, 7104(a)); *Jarrell v. Nicholson*, 20 Vet. App. 326, 330-31 (2006). A regional office's decisions are appealable to the Board of Veterans Appeals, an appellate tribunal within the VA. *Henderson*, 562 U.S. at 431, 131 S.Ct. 1197 (citing 38 U.S.C. §§ 7101, 7104(a)). A veteran dissatisfied with the Board's decision may seek reconsideration outside the agency by appealing that decision to the United States Court of Appeals for Veterans Claims, an Article I court. 38 U.S.C. §§ 7251, 7261. "[D]ecisions of the Veterans Court are reviewed exclusively by the Federal Circuit," whose decisions, in turn, are appealable to the Supreme Court upon certiorari. *Veterans for Common Sense v. Shinseki*, 678 F.3d 1013, 1022 (9th Cir. 2012) (en banc) (*VCS*). In short, the VJRA channels jurisdiction over certain claims toward a mandatory administrative process with judicial review, and away from district courts.

But which types of claims? In *VCS*, the Ninth Circuit answered: "§ 511 precludes jurisdiction over a claim if it requires the district court to review VA decisions that relate to benefits decisions, including any decision made by the Secretary in the course of making benefits determinations." 678 F.3d at 1025 (internal citations and quotations omitted). "This preclusion extends not only to cases where adjudicating veterans' claims requires the district court to determine whether the VA acted properly in handling a veteran's request for benefits but also to those decisions that may affect such cases." *Id.* By contrast, where adjudicating a claim "would not 'possibly have any effect on the benefits [the plaintiff] has already been awarded,' " Section 511 preclusion does not apply. *Id.* at 1023 (quoting *Littlejohn v. United States*, 321 F.3d 915, 921 (9th Cir. 2003)).

***714** The *VCS* court proceeded to apply this standard and concluded that it had jurisdiction over one of the plaintiff's claims, but not over others. For instance, the court did not have jurisdiction over plaintiff's "claims that delays in the [VA's] provision of mental health care violate" veterans' statutory and constitutional rights. *VCS*, 678 F.3d at 1026. This claim fell within Section 511's preclusive ambit because adjudicating it would require the district court to "evaluat[e] the circumstances of individual veterans and their requests for treatment" and "determin[e] whether the VA handled those requests properly." *Id.* at 1027.

The plaintiff's due process claim, on the other hand, was justiciable in a district court. Plaintiffs challenged the "lack of adequate procedures," like subpoena power, "when veterans file their claims for service-related disability benefits at VA Regional Offices." *Id.* at 1033. The court exercised jurisdiction because adjudicating this claim would not require the court to "review 'decisions' affecting the provision of benefits to individual claimants." *Id.* at 1034 (quoting 38 U.S.C. § 511(a)). "Indeed, [the plaintiffs] d[id] not challenge decisions at all." *Id.*

b. Application

Plaintiffs challenge the absence of Permanent Supportive Housing ("PSH") on and near the WLA Grounds, alleging that it constitutes discrimination because of disability.

Importantly, the PSH that Plaintiffs seek is not a benefit. Under VA regulations, a benefit is any "service ... entitlement to which is determined under laws administered by the [VA] pertaining to veterans[.]" 38 C.F.R. § 20.3(e). Defendants do not argue that PSH fits within this definition of a "benefit." Accordingly, Plaintiffs do not seek a judicial decree that they are entitled to a specific benefit, a claim that would certainly fall within Section 511's jurisdictional bar.

Instead, Plaintiffs allege that PSH is a reasonable accommodation that is necessary for them to access the benefits that they have already been awarded. This claim is "sufficiently independent of any VA decision as to

[Plaintiffs'] claim[s] for benefits," so Section 511 does not bar this Court's jurisdiction. *See VCS*, 678 F.3d at 1034. Like the due process challenge in *VCS*, Plaintiffs here "do[ ] not challenge" VA "decisions" regarding the need for PSH "at all." *See* 678 F.3d at 1034. Plaintiffs do not allege, *see* FAC ¶¶ 254–63, nor do Defendants argue, VA Mot. at 11, that the need for PSH issue was raised at any benefits hearing or any other proceeding before the agency. Accordingly, that issue cannot be deemed "necessary to a decision by the Secretary," because it was not considered at any point in the decision-making process. *See* 38 U.S.C. § 511(a). Thus, the VJRA does not preclude this Court's jurisdiction.

The D.C. Circuit reached a similar conclusion in *Broudy v. Mather*, 460 F.3d 106 (D.C. Cir. 2006). There, a group of veterans sued the VA alleging that they had been prevented from pursuing disability benefits claims for illnesses caused by radiation exposure. *Id.* at 114. The court rejected the VA's Section 511 preclusion argument because the Secretary had never considered the specific issues related to radiation dosage in his denial of benefits that the plaintiffs alleged in their subsequent lawsuit. *Id.* Here too, when the VA determined that Plaintiffs were entitled to benefits, they did not consider whether PSH was necessary for Plaintiffs to access those benefits. Because Plaintiffs do not challenge a decision by the Secretary, Section 511 preclusion does not apply. *See id.*

***715** That Section 511 preclusion applies only to issues that the agency has considered and decided follows logically from the VJRA's purpose. Since the VA's creation, Congress has "consistently precluded judicial review of veterans' benefits determinations." *VCS*, 678 F.3d at 1020 (internal quotations omitted). The current preclusion statute, Section 511, was passed in response to the Supreme Court's then-recent decision in *Traynor v. Turnage*, 485 U.S. 535, 108 S.Ct. 1372, 99 L.Ed.2d 618 (1988). In that case, the Supreme Court interpreted Section 511's precursor[15] narrowly to allow judicial review of a claim alleging that the VA's denial of certain veterans' benefits based on a veteran's alcoholism violated his rights under the Rehabilitation Act. *Id.* at 552, 108 S.Ct. 1372. In Congress's eyes, *Traynor* threatened the VA's primacy in "technical[ ] decision making" regarding veterans' claims for benefits. *See* H.R. Rep. No. 100-963 at 20-21, 27-28. Section 511's broader language reasserted the expert agency's role, subject to review by a specialized appellate system, as the primary arbiter of which benefits are the entitlements of veterans. *See id.*; *Johnson v. Robison*, 415 U.S. 361, 370, 94 S.Ct. 1160, 39 L.Ed.2d 389 (1974) (recognizing that the purpose of Section 511's precursor was for the VA to make "technical and complex" benefits decisions); *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 186, 143 S.Ct. 890, 215 L.Ed.2d 151 (2023) (stating that the goal of a different jurisdiction-stripping statute was to "give the agency a heightened role in the matters it customarily handles and can apply distinctive knowledge to").

But where the VA has not considered a question during a benefits hearing, it has not brought its expertise to bear, and the VJRA's purpose is not implicated. More critically, the Rehabilitation Act is a generally applicable anti-discrimination statute. It applies to "*any* program or activity conducted by *any* Executive Agency." 29 U.S.C. § 794(a) (emphasis added). The law is not administered by the VA, and Article III courts have significant experience adjudicating Rehabilitation Act denial of access claims. Therefore, Article III courts appear to be better equipped, relative to the VA and HUD, to adjudicate Plaintiffs' claims that the VA systematically discriminates against veterans based on their disabilities. *See Sierra v. City of Hallandale Beach*, 904 F.3d 1343, 1351–52 (11th Cir. 2018) (jurisdiction stripping statute did not give the FCC exclusive jurisdiction over Rehabilitation Act because "the FCC has no expertise" on "what constitutes a violation under the Rehabilitation Act"); *Floyd-Mayers v. Am. Cab Co.*, 732 F. Supp. 243, 247 (D.D.C. 1990) (deciding Article III courts are "better equipped to resolve disputes arising" under "federal ... civil rights statutes," despite the agency's "greater expertise in its specialized field").

The VA argues that Section 511 precludes jurisdiction over Plaintiffs' claims because adjudicating those claims requires the Court to engage in three inquiries which "affect[ ]" a veterans' request for benefits: (1) determining whether Plaintiffs are entitled to benefits, (2) assessing the scope of those benefits, and (3) deciding whether permanent housing is necessary to access those benefits. VA Reply at 8-9 (quoting ***716** *Blue Water Navy Viet. Veterans Ass'n, Inc. v. McDonald*, 830 F.3d 570, 576 (D.C. Cir. 2016)). As to the first two inquiries, the VA has already decided that Plaintiffs are eligible for benefits, and Plaintiffs take those determinations as a given. Plaintiffs merely ask the Court to acknowledge these undisputed decisions because those decisions serve as a factual predicate to Plaintiffs' denial-of-access Rehabilitation Act claims. In this respect, Plaintiffs' claims are independent of any request for veterans' benefits.

The third inquiry—deciding the necessity of PSH—"affects" a veterans' requests for benefits in the literal sense of that word, because, with PSH, a veteran may be able to access their benefits. But courts have cautioned against reading Section 511 hyper-literally. Section 511 does not give the VA exclusive jurisdiction to "consider *all* issues that might somehow touch upon

whether someone receives veterans benefits." *Broudy*, 460 F.3d at 112 (emphasis added). Rather, Section 511 prevents judges from second-guessing VA "decision[s] about benefits." *Id.*; *see also VCS*, 678 F.3d at 1034. Because the issue of whether Plaintiffs may *reach* their previously awarded benefits is distinct from the underlying benefit awards themselves, Section 511, properly read, does not preclude jurisdiction here.

c. Defendants' position would create a jurisdictional void.

Plaintiffs cannot bring their Rehabilitation Act claims through the VJRA's multi-layered system for adjudicating benefit awards. Because "Congress rarely allows claims about agency action to escape effective judicial review," *Axon*, 598 U.S. at 186, 143 S.Ct. 890, this lack of an alternative forum confirms that this Court has jurisdiction notwithstanding Section 511. *See VCS*, 678 F.3d at 1034-35.

The first step of the VJRA's adjudicative process is for a veteran to present a "claim" for benefits at a VA regional office ("VARO"). 38 C.F.R. § 20.3(a). A claim is any "written or electronic communication requesting a determination of entitlement ... to a specific benefit under the laws administered by the VA." 38 C.F.R. § 3.1(p). The Rehabilitation Act is not a law that creates benefits for veterans, so Rehabilitation Act complaints cannot be presented as claims for benefits to VAROs. Without being able to present a claim to a VARO, a veteran cannot access the higher levels of VJRA's review system, like the Court of Veterans Appeals and the Federal Circuit, because those courts' review is "premised on" the agency making a decision. *Ledford v. West*, 136 F.3d 776, 779 (Fed. Cir. 1998). Plaintiffs here do not seek a benefit under the VA-administered laws, so they cannot avail themselves of the VJRA's review process.

The VA's own internal regulations and policies highlight that point. The Board's Rules of Practice lists more than two dozen examples "of the issues over which the Board has jurisdiction." 38 C.F.R. § 20.104(a)(1)-(29), *see also id.* § 20.104(b). Rehabilitation Act claims are not enumerated. While the list is not exhaustive, none of the examples are comparable to the Rehabilitation Act. *See id.* Instead, the examples all relate to whether an individual is entitled to benefits under laws administered by the VA. *Id.* Thus, the VA's internal regulations confirm that the VJRA's review system is trained at adjudicating individual claims for veterans' benefits, not handling complaints under generally applicable civil rights laws, like the Rehabilitation Act. The Veterans Claims Court has explicitly recognized as much: "[N]either the [Board of Veterans Appeals] nor th[is] Court is authorized to hear actions brought under" the Rehabilitation ***717** Act.[16] *Camacho v. Nicholson*, 21 Vet. App. 360, 366 (2007).

For Rehabilitation Act denial of access claims, the VA has a separate review body, independent of the Veterans Judicial Review Act (VJRA) system. That body is responsible for processing veterans' Rehabilitation Act complaints, and internal VA guidelines set forth the ways a veteran may file such a complaint and the agency's procedures for handling it. *See* VA Handbook 5975.6, *Compliance Procedures Implementing Section 504 of the Rehabilitation Act of 1973—Nondiscrimination Based on Disability in Federally Conducted Programs or Activities*, ¶¶ 3.b(4), 4.h (Jan. 23, 2020). The existence of this separate body to address Rehabilitation Act complaints indicates that the VJRA's adjudicative system lacks jurisdiction over the same. *See Littlejohn*, 321 F.3d at 921 n.5 (concluding that the VA's separate administrative procedures for handling FTCA claims "reinforced" the conclusion that the VJRA system did not have jurisdiction over the plaintiff's FTCA claims). While it appears that Plaintiffs could bring their Rehabilitation Act claims to that body, they are permitted to come to federal court instead. *See Smith v. Barton*, 914 F.2d 1330, 1338 (9th Cir. 1990) ("[P]rivate plaintiffs suing under [the Rehabilitation Act] need not first exhaust administrative remedies").

Even if Plaintiffs could bring their claims through the agency and prevailed, their victory would be a hollow one. Plaintiffs seek an injunction requiring the VA to provide permanent supportive housing. *See* FAC ¶ 351. But the Court of Veterans Appeals and the Federal Circuit cannot provide that kind of equitable relief. *See Burris v. Wilkie*, 888 F.3d 1352, 1359 (Fed. Cir. 2018). This Court, by contrast, may remedy Rehabilitation Act violations with affirmative injunctions. *See* 29 U.S.C. § 794a (establishing that all remedies "set forth in Title VI of the Civil Rights Act of 1964" are available under the Rehabilitation Act); *Alexander v. Sandoval*, 532 U.S. 275, 279, 121 S.Ct. 1511, 149 L.Ed.2d 517 (2001) (holding that Title VI authorizes injunctive relief). The VA's inability to grant adequate relief to Plaintiffs is a factor weighing strongly in favor of finding jurisdiction here. *See Torres v. U.S. Dep't of Homeland Sec.*, 411 F. Supp. 3d 1036, 1049 (C.D. Cal. 2019) (finding an exclusive agency review scheme did not preclude jurisdiction because, among other reasons, the agency was not authorized to provide the relief the plaintiffs sought).

Because Plaintiffs cannot bring their Rehabilitation Act

claims through the VA, much less obtain the relief they desire there, the Court has jurisdiction over their claims.

2. Standing and Mootness

Standing and mootness are aspects of federal subject matter jurisdiction. *Fleck and Assocs., Inc. v. City of Phoenix*, 471 F.3d 1100, 1106 n.4 (9th Cir. 2006); *United States v. Strong*, 489 F.3d 1055, 1060 (9th Cir. 2007). A plaintiff has standing when they have suffered an injury caused by the defendant that a favorable court ruling would redress. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). ***718** Whether a plaintiff has standing is assessed at the time they file their complaint. *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs., Inc.*, 528 U.S. 167, 189–93, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000). Mootness, on the other hand, can be described as "standing set in a time frame." *Id.* at 189, 120 S.Ct. 693. In other words, the mootness doctrine ensures that the plaintiff continues to have a "personal stake in the outcome of the lawsuit" at every point after it was filed. *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 478, 110 S.Ct. 1249, 108 L.Ed.2d 400 (1990). The defendant bears the burden to show that a case has become moot, *Bayer v. Neiman Marcus Grp., Inc.*, 861 F.3d 853, 862 (9th Cir. 2017), but the onus is on the plaintiff to demonstrate that they have standing, *Lujan*, 504 U.S. at 560-61, 112 S.Ct. 2130.

a. Plaintiffs have standing to pursue Claims I and III against HUD.

In Claims I and III, Plaintiffs allege that HUD does not sufficiently fund the veteran specific housing voucher program (HUD-VASH). In 2020 and 2021, HUD allocated funding for only 500 HUD-VASH vouchers, a number that pales in comparison to the approximately 4,000 and counting unhoused veterans in the area. Oral Arg. Tr. at 151. Plaintiffs allege that those without vouchers find it enormously difficult to find PSH at all, much less in a location that enables them to access their benefits administered on the WLA Grounds. Those fortunate few who have vouchers may find it easier to find housing, but they cannot find housing on or near the WLA Grounds, since the voucher rates are allegedly too low to cover rent in that posh neighborhood.[17]

HUD seeks to pass the buck. HUD notes that HACLA administers the program, so Plaintiffs' injuries are traceable to HACLA, not HUD. HUD Mot. at 8. The Court disagrees. HUD acknowledges that they "provid[e] grant funding" to HACLA. *Id.* And Plaintiffs' injury stems from the inadequate funding of HUD-VASH vouchers. Therefore, Plaintiffs' injury is fairly traceable to HUD, and Plaintiffs have standing as a result.

b. Plaintiff Sessom lacks standing to pursue Claim II against HUD, but Plaintiff Johnson still presents a live controversy.

Claim II, brought by Plaintiffs Sessom and Johnson, challenge the way that HUD calculates income when determining eligibility for housing vouchers. To qualify for a housing voucher, a person's income must be below a certain threshold. Usually, that threshold is between 30 and 50% of the median income in a particular area ("AMI"). FAC ¶ 30. A voucher applicant's "income" includes "full amount of periodic amounts received from ... disability ... benefits[.]" 24 C.F.R. § 5.609(b)(4). Veterans who are severely disabled receive more in disability benefits, so their "income" is higher. This higher income, in turn, can disqualify them from receiving a housing voucher. Perversely, then, the more disabled a veteran, the less likely they are to receive a HUD-VASH voucher and become housed.[18] Plaintiff contends ***719** that this method for calculating income discriminates against them on the basis of disability.

HUD argues that Mr. Sessom lacks standing to challenge the method of calculating income. HUD Mot. at 8. The Court agrees. Mr. Sessom is eligible for a HUD-VASH voucher, but he "has not been able to find a landlord who is both willing to accept a VASH voucher and close enough" to walk to the WLA Grounds. FAC ¶ 56. Thus, Mr. Sessom's injury is traceable to private landlords, not HUD. Mr. Sessom was also denied housing on WLA Grounds, because his income was too high. But the FAC alleges that HUD is not responsible for providing housing on the WLA Grounds. *Id.* ¶¶ 22, 29. Therefore, Mr. Sessom's inability to secure housing on the WLA Grounds is neither caused by HUD nor redressable by a favorable ruling against HUD. Mr. Sessom lacks standing to pursue Claim II against HUD as a result.

HUD next argues that Mr. Johnson's claim is moot because he has received housing on the WLA Grounds since the FAC was filed. HUD Reply at 9. Mr. Johnson agrees that his claim is moot, but argues that it is nonetheless justiciable because he may become unhoused in the future. In that event, Mr. Johnson argues, his injury related to HUD's method of calculating income would resume.

Although a federal court generally "loses its jurisdiction to reach the merits of a claim when the court can no longer effectively remedy a present controversy between the parties," *Protectmarriage.com-Yes on 8 v. Bowen*, 752 F.3d 827, 836 (9th Cir. 2014), there are exceptions to this rule. "[W]here an otherwise moot action is capable of repetition yet evading review," a court retains jurisdiction over that claim. *Id.* The "wrong capable of repetition yet evading review" exception to mootness applies when "(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 170, 136 S.Ct. 1969, 195 L.Ed.2d 334 (2016).

Mr. Johnson satisfies both elements of this mootness exception. After Mr. Johnson's honorable discharge from the Army, he has transitioned several times between temporary housing and the streets. Mr. Johnson lived in a tiny shed on the WLA Grounds but was forced to move out after an electrical fire, allegedly due to a phone charger. FAC ¶ 89. He then set up a tent outside the WLA Grounds, where he could not obtain a HUD-VASH voucher because his disability payments put him over the income threshold for that program. *Id.* A couple months after becoming unhoused, Mr. Johnson found permanent supportive housing on the WLA Grounds. HUD Supp. Br. at 16. Because a couple months is not enough time for Mr. Johnson to litigate his injury regarding his ineligibility for HUD-VASH vouchers, HUD's challenged action is of a sufficiently limited duration. *See Kingdomware Techs.*, 579 U.S. at 170, 136 S.Ct. 1969. Likewise, because 20% of persons placed in housing end up reentering the ***720** homeless population, FAC ¶¶ 16, 18, there is a reasonable expectation that Mr. Johnson will become homeless again, and again fail to qualify for a HUD-VASH voucher because of the AMI restriction. Therefore, the second element of the mootness exception is satisfied. Mr. Johnson's claims are justiciable.

Other than Plaintiff Sessom, who lacks standing to pursue Claim II, Plaintiffs' Rehabilitation Act claims are justiciable in this Court.

B. Merits

HUD argues that Plaintiffs' complaint does not state a claim against HUD under Section 504 of the Rehabilitation Act. To plead a prima facie Section 504 case, a plaintiff must plausibly allege (1) that he suffers from a disability, (2) that he is otherwise qualified to receive a government benefit, and (3) he was "denied the benefits of the program solely by reason of his disability." *Duvall v. Cnty. of Kitsap*, 260 F.3d 1124, 1135 (9th Cir. 2001).

1. Claims I and III are adequately pled.

In Claims I and III, Plaintiffs allege that HUD insufficiently funds vouchers to meet rental rates in the areas where the VA's health care services are provided. Without vouchers sufficient to purchase housing near the VA's health care services (a government benefit), Plaintiffs allege that they cannot access those services and are placed at risk of living in institutional settings. Veterans without disabilities do not encounter such risks or difficulties in accessing benefits. Thus, the Complaint plausibly alleges that HUD's funding of the HUD-VASH program denies them a government benefit "by reason of [Plaintiffs'] disabilit[ies]." *See Duvall*, 260 F.3d at 1135.

2. Claim II is adequately pled.

In Claim II, Plaintiffs allege that that the way Defendants determine a veteran's income to assess their eligibility for housing vouchers constitutes disability discrimination.

HUD makes two arguments for why this claim should be dismissed. First, HUD argues that Plaintiffs do not allege discrimination on the basis of disability because the income restrictions apply to disabled and non-disabled applicants alike. HUD Mot. at 11-12. This argument fails, because the Rehabilitation Act recognizes disparate impact claims. *See Payan v. Los Angeles Comm. Coll. Dist.*, 11 F.4th 729, 735-37 (9th Cir. 2021). For example, the Ninth Circuit concluded that Hawaii's quarantine requirement for dogs entering the state violated the Rehabilitation Act. *Crowder v. Kitagawa*, 81 F.3d 1480, 1484 (9th Cir. 1996). Although everyone was required to quarantine their dog, the policy was discriminatory because it burdened those with visual impairments "greater than it burden[ed] others." *Id.* Here too, AMI's inclusion of disability payments as income penalizes more disabled veterans because of their disability, even if the regulation is facially neutral.

Second, HUD argues that it is not responsible for the AMI income limitations. HUD Mot. at 12. Instead, HUD argues that third-party housing developers create income limits restricting who may live in low-income housing

units. *Id.* HUD's argument is undercut by its own regulations. HUD funds the voucher program and requires that the PHAs who accept HUD-vouchers to "comply with HUD regulations." 24 C.F.R. § 982.52(a). HUD regulations, in turn, define income to include "[t]he full amount of periodic amounts received from ... disability ... benefits[.]" 24 C.F.R. § 5.609(b)(4). Therefore, Plaintiffs have plausibly alleged that HUD's ***721** regulations discriminate against Plaintiffs because of their disabilities. *See* FAC ¶¶ 241-43.

II. Charitable Trust Claims

Plaintiffs' next claim centers on the VA's fiduciary duty to disabled veterans on the WLA Grounds. Plaintiffs allege that the 1888 deed conveying the West Los Angeles campus created a charitable trust, with the government as trustee, and veterans with disabilities as the intended beneficiaries. FAC ¶ 31. Plaintiffs argue that as trustees, VA Defendants "have a non-discretionary and nondelegable fiduciary duty" to "use the land only for purposes that directly contribute to the establishment and permanent operation of housing and healthcare for veterans with disabilities." FAC ¶¶ 338-39. By "authorizing the many uses of the WLA Grounds that do not directly contribute to the operation of housing and healthcare for veterans with disabilities[ ] and [ ] failing to take substantial affirmative steps to administer the trust solely with a view to the accomplishment of this purpose," Plaintiffs allege that VA Defendants breached their fiduciary duty as trustees. *Id.*

VA Defendants argue that "West LA campus is not a charitable trust, and even if it were, 'the Government has not assumed any enforceable fiduciary obligation with respect to' any charitable trust that could have been created by the 1888 deed." VA Mot. at 3 (citing *Valentini v. Shinseki*, 860 F. Supp. 2d 1079, 1111 (C.D. Cal. 2012)).

In order to create a charitable trust, there must be an intention to convey the property for a charitable purpose. No "magic words" are needed to create a charitable trust. Restatement (Second) of Trusts § 24(2) ("No particular form of words or conduct is necessary for the manifestation of intention to create a trust."). The intent of the donor is the critical factor. "The intention of the parties to the deed should control the construction of the instrument. The object in construing a deed is to ascertain the intention of the parties, and especially that of the grantor, from the words which have been employed in connection with the subject-matter, and from the surrounding circumstances." *Aller v. Berkeley Hall School Found.*, 40 Cal.App.2d 31, 103 P.2d 1052 (1940). Moreover, "because charitable bequests are favored, they will be upheld if one can possibly be construed as valid by applying liberal rules of construction designed to accomplish the intent of the trustor or testator." *Estate of Breeden*, 208 Cal.App.3d 981, 985, 256 Cal.Rptr. 813 (1989).

Through the 1888 Deed, the grantors gave the land to the government for the benefit of disabled veterans ("1888 Deed") (Dkt. 37-3). Specifically, the land was given "in consideration" that the Government "should locate, establish, construct, and permanently maintain a branch of said National Home for Disabled Volunteer Soldiers ...." 1888 Deed ¶ 3. The 1866 Act, in turn, authorized the Government to accept the gift and pursuant to that authority, the government did accept the gift. *See* 24 U.S.C. § 111, 14 Stat. 10 (1866). As another court has held, "[t]he language in the 1888 Deed expresses far more than a *hope* on the part of the grantors that the land would be used for certain purposes; the 1888 Deed *requires* that the land be used as indicated for all time." *Valentini*, 860 F. Supp. 2d at 1104. "Because land was given to the Government for the purpose of benefitting a defined group of beneficiaries, a charitable trust was created, with the Government as trustee and disabled veterans as beneficiaries." *Id.* at 1106.

***722** While the 1888 Deed created a charitable trust, whether the government has assumed enforceable trust duties is a separate question. "The United States or a State has capacity to take and hold property in trust, *but in the absence of a statute otherwise providing the trust is unenforceable against the United States or a State.*" Restatement (Second) of Trusts § 95 (emphasis added); *see also* Restatement (Second) of Trusts § 378 (same rule with respect to charitable trusts specifically). Unless the government has signaled an agreement, via statute, to assume enforceable trustee duties, any "duties" it assumes as a trustee are non-enforceable. *See Valentini*, 860 F. Supp. 2d at 1104. "[G]ifts to the United States which involve any duty, burden, or condition, or are made dependent upon some future performance by the United States, are not accepted by the Government unless by the express authority of Congress .... And Congress has on many occasions not only accepted conditional gifts, but has provided means for the future acceptance and encouragement of special gifts to be devoted to particular purposes ...." *Story v. Snyder*, 184 F.2d 454, 456 (D.C. Cir. 1950).

Defendants cite to *Valentini*, where the court found that the 1888 Deed created a charitable trust but that the government did not express "agreement, via statute, to

assume enforceable duties" relating to the trust. 860 F. Supp.2d at 1106. In reaching its conclusion, the court there "examine[d] the language of the 1866 Act to determine if, in addition to authorizing the acceptance of conditional gifts, the 1866 Act signaled Congress's intent to accept fiduciary duties as a trustee." *Id.* The court found it did not. *Id.*

Plaintiffs here argue that since *Valentini*, Congress has twice passed acts signaling the government's assumption of enforceable duties: (1) the West Los Angeles Leasing Act of 2016, Pub. L. No. 114-226 (2016) ("WLALA"), and (2) the West Los Angeles VA Campus Improvement Act of 2021, Pub. L. No. 117-18, 135 Stat. 288. ("2021 Amendment"), which amended the WLALA. *See* VA Opp'n at 27-28. According to Plaintiffs, "[t]hese Acts impose mandatory duties consistent with the express purpose of the charitable trust" and, through them, the government assumed enforceable fiduciary duties. *Id*. The Court agrees.

The duties and responsibilities set forth in WLALA include the duty to review, audit, and evaluate management of leases or land use to ensure that they advance the purpose of providing housing and services that principally benefit veterans and their families. *See generally* WLALA § 2. The statute authorizes the Secretary to carry out leases at the West Los Angeles Campus in Los Angeles, California that "principally benefit veterans and their families." *Id.* § 2(a). It also prohibits "any land-sharing agreement" unless it "provides additional health-care resources to the Campus" and "benefits veterans and their families ...." *Id.* § 2(d). Moreover, the Secretary is required to prepare annual reports that, among other things, includes an evaluation of the management of the revenue generated by the leases, the manner in which such revenue is expended, and the direct benefits such expenditures provide to veterans. *See* WLALA §§ 2 (d), (j).

In other words, the WLALA requires the government to treat the property donated by the 1888 Deed in a manner consistent with the conditional donation, i.e., for the purpose of benefitting veterans. The statutory obligations mirror the types of fiduciary duties that trustees traditionally assume. *See e.g.*, Restatement (Third) of Trusts § 76 ("The trustee has a duty to administer the trust, diligently and in good ***723** faith, in accordance with the terms of the trust and applicable law.").

At the hearing, Federal Defendants repeatedly disclaimed any fiduciary duty to veterans under Plaintiffs' charitable trust claim.[19] Federal Defendants have asked the Court to clarify the scope of this fiduciary duty. VA Supp. Brief at 17. The typical fiduciary duties of trustees set out here are fitting, especially as these duties share strong parallels with the language of the WLALA. The statutory duties imposed under the WLALA lead the Court to place minimal weight on the absence of an explicit private right of action in the statute in determining the statute creates enforceable fiduciary duties.

Because Plaintiffs have plausibly alleged that the 1888 Deed created a charitable trust and that the government, through the WLALA and 2021 Amendment, assumed enforceable trust duties, the Court DENIES Defendants' Motion to Dismiss the breach of fiduciary duty claims.

III. Administrative Procedure Act (APA) Claim

Plaintiffs allege that "land deals involving property and facilities on the West LA Grounds have been improperly executed pursuant to the West Los Angeles Leasing Act (WLALA), which authorizes only agreements that "primarily benefit" veterans." FAC ¶ 341. Plaintiffs argue that Defendants have acted contrary to the WLALA in these land deals, thereby violating the APA. 5 U.S.C. § 706(2)(A), (C).

VA Defendants move to dismiss Plaintiffs' APA claim under Rule 12(b)(6), arguing that all land use arrangements identified as noncompliant in the 2021 OIG Report, which Plaintiff repeatedly relies on, comply with the WLALA.[20] Mot. at 2. Specifically, Defendant argues that the following land-use agreements are permissible: (1) a lease with the Brentwood School, (2) a lease with a parking lot company, (3) a drilling license to WG Holdings to extract oil and gas, and (4) easements to CalTrans, the City of Los Angeles, and the South Coast Air Quality Management District.[21] As Defendants offer different explanations for why each agreement is compliant with the WLALA, the Court discusses each agreement in turn.

A. Brentwood School Lease

Under the APA, a court shall set aside final agency action if it determines that the action is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A), (C). Courts have "broad discretion to fashion equitable remedies" under the APA. *Tinoqui-Chalola Council of Kitanemuk & Yowlumne Tejon Indians v. U.S.*

Dep't of Energy, 232 F.3d 1300, 1305 (9th Cir. 2000) (noting courts have the authority under the APA to order rescission of a sale upon a determination an agency acted in excess of statutory authority or without observance of the procedures required by law).

***724** Here, the West Los Angeles Leasing Act (WLALA) limits the VA's authority to issue third-property leases on the WLA Grounds to those that "provide services that principally benefit veterans and their families" and that are limited to select purposes including promotion of health and wellness, education, and transportation. WLALA, § 2(b)(2)(A)-(I). The term "principally benefit veterans and their families" is defined as services provided under a lease that are "designed for the particular needs of veterans and their families, as opposed to the general public, and any benefit of those services to the general public is distinct from the intended benefit to veterans and their families." *Id.* § 2(l)(1)(B). A third-party lease on the WLA Grounds is thus contrary to law if the lease does not meet these requirements.

VA Defendants argue that the lease to Brentwood School complies with the WLALA as "a permissible service promoting 'health and wellness' for veterans." VA Mot. at 15. Defendants further argue that the facilities satisfy the statutory definition of "principally benefit veterans and their families" because they "are designed for the particular needs of veterans and their families, as opposed to the general public, and any benefit of those services to the general public is distinct from the intended benefit to veterans and their families." *Id.*; WLALA § 2(l)(1)(B). Defendants point to the face of the lease agreement, which states that the purpose of the revised lease is "to principally benefit Veterans and their families" and provides times when the facilities are exclusively accessible to veterans and their families, among other veteran-specific benefits. VA Mot. at 15.

In response, Plaintiffs argue that the Brentwood School lease, which the school uses to operate athletic facilities on 21 acres of the WLA Grounds, "may pay lip service to this goal [to principally benefit veterans] in its text and in some veteran-specific benefits," but "the overall purpose of the lease 'was to provide the Brentwood School continued use of the athletic facilities.' " VA Opp'n at 18, citing 2021 OIG Report at 24. The Court agrees.

The VA's own officials have admitted that the property is being misused. Plaintiffs point to an interview with Robert McKenrick, former VA Executive Director for the Master Plan in which he admits, "[t]he arrangement with the school is noncompliant on the land use," but states that the VA feared that the school would sue if the lease were terminated. FAC n. 226. The VA expressed no concern over unhoused veterans suing the VA if the leases were to continue. It appears that the VA official was worried more about the prospect of a lawsuit by the private school than the agency's mandate to serve veterans.

Furthermore, the Court is doubtful that many of the services provided by the school are actually principally benefitting veterans. For example, Plaintiffs cite to a CNN investigation that revealed an average of only 12 veterans a day visited the athletic facilities in 2021, compared with more than 1,200 enrolled students.[22] Without permanent housing for veterans on the campus itself, few veterans apparently can take advantage of the private school's extensive athletic facilities.

Defendants contend members of Congress believed that the future lease with the Brentwood School met the criteria of the Leasing Act when drafting that law. "The case law of the Supreme Court and ***725** our court establishes that legislative history, untethered to text in an enacted statute, has no compulsive legal effect." *Nw. Env't Def. Ctr. v. Bonneville Power Admin.*, 477 F.3d 668, 682 (9th Cir. 2007) (finding agency acted contrary to law when basing its action solely on legislative history). Here, the lease is contrary to the plain terms of the statute. The VA cannot rest on legislative history alone.

The Court also notes that Congress mandated in the Leasing Act that the VA's Office of Inspector General (OIG) conduct reports "on all leases carried out at the Campus and the management by the Department of the use of land at the Campus." WLALA, § 2(h)(1). Acting under this mandate, the VA's OIG found the Brentwood School lease noncompliant in its 2021 report for the same reasons Plaintiffs cite, namely that the facilities are designed primarily to benefit the Brentwood School, not veterans. 2021 OIG Report at 24.

Under a common-sense reading of the statute, a lease for a private school's athletic facilities is not designed to "principally benefit veterans and their families." If this lease were sufficient to meet the standard set out by Congress, the entire West LA campus could be dismembered by private entities that provide marginal benefits to veterans.

A review of the dispute between VA and OIG counsel regarding the legality of the Brentwood School lease helps clarify VA Defendants' position in the present motion to dismiss. In this exchange, the OIG summarizes the VA's interpretation of the relevant section of the WLALA as follows:

"VA shared its interpretation of Section 2 (b)(2) and

> why it believed the Brentwood School lease complied with those provisions. VA's interpretation does not require the underlying lease to provide services that principally benefit veterans, it just requires the Lessee provide services that principally benefit veterans and their families. VA OGC stated "VA can grant leases at West LA for terms of up to 50 years – where the third party provides services that principally benefit Veterans and their families." Therefore, the actual use of the land is secondary to the services received."

2021 OIG Report at 94.

This position, however, is contrary to the plain language of the statute. Section 2(b)(2) of the WLALA limits land-use agreements on the WLA Grounds in part to "[a]ny lease of real property for a term not to exceed 50 years to a third party to provide services that principally benefit veterans and their families." The Court interprets this section as Congress mandating that any underlying leases to third parties be for the purpose of providing services that principally benefit veterans. The actual use of the land is therefore not secondary to any ancillary services lessees provide to veterans. The Court's interpretation is the one most consistent with the context in which Congress enacted the WLALA, in the wake of litigation over the misuse of the WLA Grounds.[23] Under this reading of the statute, VA Defendants have not demonstrated that the Brentwood School leases 21 acres of athletic facilities in order to benefit veterans, rather than to provide premier athletic facilities for their ***726** students.[24] Plaintiffs have therefore stated a plausible APA claim regarding this lease.

As Plaintiffs have plausibly asserted that the Brentwood School lease does not principally benefit veterans, they have stated a claim under the APA, and as such Defendant's Motion is DENIED as to the lease with the Brentwood School.

B. SafetyPark Lease

Defendants offer a related defense of the lease with the SafetyPark parking lot, arguing that it is valid exercise of the Secretary's authority to enter into leases that "principally benefit veterans and their families" that involve "transportation." WLALA, § 2(b)(2)(H), VA Mot. at 19. Defendants admit that the public may park in the parking lot but contend that the lease with SafetyPark principally benefits veterans because of favorable provisions in the lease providing for preferential hiring of veterans and remittance of net revenues to the VA. VA Mot. at 20. Plaintiffs respond that despite these benefits, the SafetyPark parking lot remains primarily a parking lot designed for the general public, regardless of its specific benefits for veterans. VA Opp'n at 19.

While the Court commends the parking lot's veteran-specific programming, the VA asserts in part that the lease principally benefits veterans because net revenues are paid to the VA. VA Mot. at 20. The Court rejects this argument, as the WLALA specifically "excludes services in which the only benefit to veterans and their families is the generation of revenue for the Department of Veterans Affairs" from the definition of principally benefits veterans and their families. WLALA, § 2(c)(2). In other words, the leases must principally benefit veterans, not principally benefit the VA.[25]

As Plaintiffs have plausibly asserted that the SafetyPark lease is contrary to the terms of the Leasing Act, they have stated a claim under the APA, and as such Defendant's Motion is DENIED as to the lease with SafetyPark.

C. Drilling License

VA Defendants next argue that a license granted to an oil company by the VA does not violate the Leasing Act because it is provided under a continuing lease from the Bureau of Land Management (BLM). VA Mot. at 19. Defendants argue that WLALA "does not limit the authority of the Secretary of the Interior or the Bureau of Land Management to continue existing leases on the land," nor does it "authorize the VA to rescind any agreement the United States of America previously made to allow oil drilling on the West LA Campus." *Id.* Defendants provide a copy of the license agreement, which names the current licensee, WG Holdings, a successor to a lease agreement under the BLM serial lease No. 0138800. VA Mot. Ex. 8. In response, Plaintiffs cite to the OIG Report, stating that the lease at issue has "no connection to the Bureau of Land ***727** Management." VA Opp'n at 18, citing 2021 OIG Report at 24. The Report further explains, "[o]n March 7, 2017, License No. 691-97-01-1L was revived in a 10-year agreement between VA and Breitburn. This 'revived' revocable license No. 691-97-01-1L is the one at issue in OIG's report, and it has no connection to BLM." *Id.* The Court agrees with Plaintiffs that whether the license at issue has any connection to the BLM is a factual dispute inappropriate for resolution at the motion to dismiss stage. Pl.'s Supp. Brief at 18. Taking their factual allegations as true, the Court finds that Plaintiffs have plausibly alleged

that the license violates the WLALA. VA Defendants' argument in the alternative that the Breitburn lease does principally benefit veterans because of an agreement to donate a monthly payment from the lease to a nonprofit that assists disabled veterans, VA Mot. at 19, again distorts the meaning of the word "principally." Defendant's Motion is therefore DENIED as to Plaintiffs' APA claim regarding the drilling license.

D. Easements

Plaintiffs challenge several easements on the WLA Grounds, including: (1) an easement to the City of Los Angeles to construct temporary supportive housing; (2) an easement to CalTrans "for the maintenance and operation of the I-405 freeway on and off ramps"; and (3) an easement to the South Coast Air Quality Management District. Pl.'s Supp. Brief at 16. VA Defendants argue that easements challenged by Plaintiffs do not violate the APA because they are consistent with both the WLALA and the Secretary's pre-existing authority to grant easements to federal and state entities pursuant to 38 U.S.C. § 8124. VA Mot. at 16.

38 U.S.C. § 8124 authorizes the Secretary to "grant on behalf of the United States to any State, or any agency or political subdivision thereof, or to any public-service company, easements in and rights-of-way over lands belonging to the United States which are under the Secretary's supervision and control." The WLALA authorizes the Secretary, pursuant to Section 8124, to "grant easements or rights-of-way on, above, or under lands at the Campus to (A) any local or regional public transportation authority to access, construct, use, operate, maintain, repair, or reconstruct public mass transit facilities, including, fixed guideway facilities and transportation centers; and (B) the State of California, County of Los Angeles, City of Los Angeles, or any agency or political subdivision thereof, or any public utility company (including any company providing electricity, gas, water, sewage, or telecommunication services to the public) for the purpose of providing such public utilities." WLALA, § 2(b)(2)(H).

Plaintiffs reject VA Defendants' interpretation of the WLALA as it regards the authority of the VA to enter into any easement authorized by Section 8124. Pl.'s Supp. Brief at 17. Plaintiffs adopt the VA Office of Inspector General (OIG)'s conclusion that the easements that the VA is allowed to enter into under the WLALA are limited and only "for the purpose of providing such public utilities." 2021 OIG Report at 65. The Court finds the OIG and Plaintiffs' interpretation of this section of the statute reasonable and agrees that the authority granted under the WLALA is more limited than that authorized under Section 8124. The easements Plaintiffs challenge do not on their face fall within the authority granted to the VA to grant easements under the WLALA and as such Defendant's Motion is DENIED as to the easements.

***728 IV. Housing Authority of the City of Los Angeles (HACLA)'s Motion**

Plaintiffs assert three claims against Defendant HACLA: (1) discrimination in violation of section 504 of the Rehabilitation Act; (2) discrimination against the subclass in violation of section 504 of the Rehabilitation Act; and (3) denial of meaningful access in violation of section 504 of the Rehabilitation Act. *See generally* FAC.

HACLA moves to dismiss on the grounds that (1) this Court lacks jurisdiction pursuant to the Veterans' Judicial Review Act ("VJRA"); (2) lack of Article III standing; (3) failure to state a claim pursuant to Rule 12(b)(6), and (4) failure to name an indispensable party pursuant to Rule 12(b)(7) and Rule 19, specifically other local public housing authorities ("PHA") in the area participating in the HUD-VASH voucher program. The Court rejects all four of HACLA's arguments.

First, the VJRA does not divest this Court of jurisdiction over Plaintiffs' claims against HACLA. Plaintiffs' claims against HACLA challenge HACLA's actions and therefore do not implicate any decision by the Secretary of the VA. *See* 38 U.S.C. § 511(a); *Blue Water*, 830 F.3d at 575 (holding that Section 511 "merely bars review in the district court of decisions that the [VA] Secretary has actually made").

Second, Plaintiffs have standing to sue HACLA. At the motion to dismiss stage, the bar to allege standing is not high. *See Maya v. Centex Corp.*, 658 F.3d 1060, 1068 (9th Cir. 2011). "[G]eneral factual allegations of injury resulting from the defendant's conduct may" be adequate because "on a motion to dismiss [courts] presume that general allegations embrace those specific facts that are necessary to support the claim." *Lujan*, 504 U.S. at 561, 112 S.Ct. 2130. The FAC alleges that HACLA administers the HUD-VASH program in a discriminatory manner by (1) refusing to exercise its funding authority to address the needs of homeless veterans with disabilities, (2) failing to work with the VA to fund construction of housing, and (3) declining to fund HUD-VASH vouchers at rates which would allow veterans to medical care. FAC

¶ 23. As a result of HACLA's actions, Plaintiffs allege that HACLA has denied them "appropriate integrated services ... solely because of their disabilities" and "Defendants' discrimination has irreparably harmed Plaintiffs." FAC ¶¶ 313–314, 318. Taking these allegations as true, as the Court must at this stage, Plaintiffs have plausibly alleged that they have standing to pursue their claims against HACLA.

Third, Plaintiffs have stated a claim under Section 504 of the Rehabilitation Act against HACLA. To plead a prima facie case, a plaintiff must plausibly allege (1) that he suffers from a disability, (2) that he is otherwise qualified to receive a government benefit, and (3) he was "denied the benefits of the program solely by reason of his disability." *Duvall*, 260 F.3d at 1135. HACLA asserts that Plaintiffs have not met the third element as to HACLA because they have not alleged HACLA "denied any Plaintiff a benefit, or did so on the basis of disability discrimination." HACLA Mot. at 18.

As a threshold matter, HACLA asserts that Plaintiffs' pleading is insufficient because they do not identify HACLA's specific conduct, instead lumping them in with the other defendants. In *Tivoli LLC v. Sankey*, however, this Court found that allegations against defendants generally comply with Rule 12(b)(6) when they "can fairly be read to claim that each of the moving Defendants participated in the specific wrongful conduct alleged." 2015 WL 12683801, at *4 (C.D. Cal. Feb. 3, 2015). Here, Plaintiffs have alleged that HACLA, ***729** one of the nation's largest public housing authorities, oversees the distribution of the veteran-specific HUD-VASH vouchers in Los Angeles. FAC ¶¶ 23, 140, 307–314, 319–323. This is sufficient for the Court to determine that HACLA participated in the wrongful conduct alleged.

HACLA next seeks to pass the buck back to HUD. HACLA argues that Plaintiffs have failed to state a claim against it because they "raise no allegations that HACLA denied HUD-VASH benefits or otherwise prohibited meaningful access to their HUD-VASH benefits at all." HACLA Mot. at 19. HACLA repeatedly asserts that the voucher rates are pre-determined by a formula provided by HUD and are not unilaterally determined by HACLA. *See, e.g.*, HACLA Mot.at 16-20. Due to their purported lack of discretion, HACLA argues Plaintiffs cannot state a claim against them.

The Court disagrees. Plaintiffs allege that Defendants, including HACLA, "administer[ed] the benefits offered by VAGLAHS and HUD-VASH in a manner that denies veterans the benefits of VAGLAHS services, programs, or activities in the most integrated setting appropriate" and that "Defendants' denial of appropriate integrated services ... is solely because of their disabilities." FAC ¶¶ 309, 313. HACLA's administration of the HUD-VASH vouchers is critical to unhoused veterans' ability to actually obtain housing. As to HACLA's discretion, Plaintiffs note in their supplemental briefing that HACLA submitted evidence of its request for exceptions and waivers from HUD for the rental amount limits, which allowed HACLA to fund HUD-VASH at a much higher rate. *See* Request for Judicial Notice, Ex. E, Dkt. 69-2. The Court agrees with Plaintiffs that if HACLA is dismissed, there is no "guarantee that HACLA will continue applying for these waivers to actually provide the appropriate amount of support to our veterans; and any relief that HACLA may provide will be temporary." Pl.'s Supp. Brief at 11-12. Thus, Plaintiffs have stated a claim against HACLA under the Rehabilitation Act, and HACLA's motion to dismiss is DENIED.

CONCLUSION

Plaintiffs have emphasized that their demands are urgent. Since their first lawsuit settled in 2015, the number of unhoused veterans in the area has more than tripled. It is unclear how many veterans have died on the streets of Los Angeles during that time, never having received housing or services.

The Court **DENIES** Defendants' Motions to Dismiss.

The parties are ordered to meet and confer to consider an expedited timeline to move this lawsuit forward. The Court sets a scheduling conference for January 4, 2024, at 10:00 a.m.

All Citations

713 F.Supp.3d 695

Footnotes

[1] First Amended Complaint ("FAC") (Dkt. 33) ¶ 21.

[2] L.A. Homeless Servs. Auth. (LAHSA), *Veterans HC2022 Data Summary (2022)*, https://www.lahsa.org/documents?id=6630-veterans-hc2022-data-summary; Meghan Henry et al., U.S. Dep't Hous. & Urb. Dev., *The 2020 Annual Homeless Assessment Report to Congress* 52 (2020) at 60, https://www.huduser.gov/portal/sites/default/files/pdf/2020-AHAR-Part-1.pdf (displaying the PIT estimates of homeless veterans between 2009-2020, with a January 2020 count of 37,252).

[3] *See* L.A. Homeless Servs. Auth., *supra* note 1; *see also* U.S. Census Bureau, *QuickFacts Los Angeles County, California* (July 1, 2022), https://www.census.gov/quickfacts/losangelescountycalifornia.

[4] John A. Schinka & Thomas H. Byrne, *Aging and Life Expectancy in Homeless Veterans*, https://www.va.gov/HOMELESS/nchav/docs/Schinka_Byrne_AgingLifeExpectancyHomelessVeterans_Sept2018_508.pdf (citing Meghan Henry et al., U.S. Dep't Hous. & Urb. Dev., *The 2016 Annual Homeless Assessment Report to Congress* (2016), https://www.huduser.gov/portal/sites/default/files/pdf/2016-AHAR-Part-1.pdf.

[5] *See* WLA VA 2022 Master Plan at 34, https://draft-master-plan-assets.s3.amazonaws.com/media/uploads/2022/04/12/2022-03-18_WLA-VA-Master-Plan-Signed.pdf.

[6] *Id.*

[7] Sheldon Ito, *Plans to House Homeless on VA Property Dropped*, LA Times, Mar. 17, 1988, at D3.

[8] *Id.*

[9] *Aging and Life Expectancy in Homeless Veterans, supra* note 3.

[10] Examples include improvement of the San Diego Freeway and the national cemetery. FAC n.158.

[11] FAC ¶ 202; *see also* FAC n.164 (citing David Rosenzweig, *VA Move Sounds 'Last Call': Twilight Hits Vets' 'Western Front' Taverns*, L.A. Times, Jan. 16, 1972, at B ("In recent years, the [area] has come under fire from community groups and homeowners in posh Brentwood. The neighborhood residents complain that winos from the VA panhandle on the streets and litter lawns with empty pint bottles of Thunderbird and Triple Jack.")).

[12] The construction of these tiny sheds coincided with the clearing of Veterans Row from San Vicente Boulevard in November 2021. *See, e.g.*, FAC ¶ 47.

[13] Congress enacted a special provision in the WLALA relating to the lease with the University of California, Los Angeles (UCLA) to ensure its compliance with the statute. WLALA § 2(b)(3).

[14] Amici legal scholars were Erwin Chemerinsky (UC Berkeley), David Marcus (UCLA), Pamela Karlan (Stanford), Judith Resnik (Yale), Laurence Tribe (Harvard), Michael Wishnie (Yale), and Adam Zimmerman (USC).

[15] That section provided: "[T]he decisions of the Administrator on any question of law or fact under any law administered by the Veterans' Administration providing benefits for veterans and their dependents or survivors shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decision by an action in the nature of mandamus or otherwise." 38 U.S.C. § 211(a) (1970).

[16] While Defendants have cited several cases where district courts have not exercised jurisdiction over Rehabilitation Act claims, they have not pointed to a case where the VJRA system has adjudicated a Rehabilitation Act claim. In any event, the district court cases that Defendants cite, VA Reply at 5 n.4, are distinguishable from this case. In those cases, the claimant challenged benefit denials as inconsistent with the Rehabilitation Act, similar to the plaintiff in *Traynor.* Here, by contrast, Plaintiffs do not use the Rehabilitation Act to complete an end-run around an adverse benefits determination.

[17] Defendants note that, since this lawsuit was filed, the vouchers have been increased to $4,000 per month. HUD Supp. Mot. at 14. Defendants argue that this increase in funding moots Plaintiffs' claims. *Id.* However, Defendants have not presented sufficient factual evidence that the new voucher rate would permit veterans to live near the WLA Grounds. Therefore, Defendants have not met their burden to show that Plaintiffs' claims are moot.

[18] A concrete (and fictional) example illustrates how HUD regulations penalize veterans for their disability. Imagine two veterans, Alice and Dom. Alice is not disabled (and therefore receives no disability payments) and has an annual income of $30,000. Like Alice, Dom receives $30,000 per year in wages. But Dom has a 60% disability rating, so he receives $10,000 in disability payments every year. Under HUD's regulations, Dom's income would therefore be $40,000. If the cut-off to receive a HUD-VASH voucher was $35,000, Alice would get the voucher and Dom would not. Yet the critical difference between the two is that Dom is disabled, and Alice is not.

[19] *See, e.g.*, Oral Arg. Tr. at 16:1-4 ("The Court: Is the V.A.'s position that there's no fiduciary duty to veterans? MR. AVALLONE: The V.A.'s position is that under the claim brought here, that there is no enforceable fiduciary duty.")

[20] VA Defendants initially moved to dismiss the APA challenge to the Brentwood School lease as untimely, but subsequently withdrew this argument (Dkt. 44).

[21] The UCLA lease, which includes their baseball stadium, was found compliant by the OIG because of Congress' specific provision for the UCLA lease in the Leasing Act. WLALA § 2(b)(3)); 2021 OIG Report at 36.

[22] Nick Watt, *Why Prime Real Estate Owned by the VA Is Leased for a Private School, a Ballpark, and an Oil Well — and Not for Homes for Veterans*, CNN (Apr. 6, 2022), https://www.cnn.com/2022/03/28/us/vareal-estate-los-angeles/index.html.

[23] Congressman Jeff Miller, for example, commented on the bill's passage, "This historic site has suffered from many years of neglect, misuse, and mismanagement; but, with passage of H.R. 5936, as amended, today, I am confident that it will finally be on the path to preservation, revitalization, and the fulfillment of its mission to serve and to provide for veterans in need throughout the Greater Los Angeles area." 162 Cong. Rec. H5276, accessible at https://www.govinfo.gov/content/pkg/CREC-2016-09-12/html/CREC-2016-09-12pt1-PgH5274.htm.

[24] For example, the Brentwood School, which charges an annual tuition of $50,880 for students in grades 6-12, advertises on its website that "our 21-acre athletic facilities are an extension of the classroom." https://www.bwscampus.com/our-program/athletics/resources-facilities.

[25] Additionally, Plaintiffs' allegations raise questions about whether generation of revenue from these leases always benefits the VA. Plaintiffs, for example, point to the fraud investigation of a VA contract officer who was arrested for taking more than $286,000 in cash bribes for over a decade from the owner of a parking lot business on the Grounds. The owner was sentenced to federal prison for orchestrating a longstanding bribery scheme in which he defrauded the VA out of more than $13 million. FAC n. 225.