

1 VANITA GUPTA
 Principal Deputy Assistant Attorney General
 2 EVE L. HILL
 Deputy Assistant Attorney General
 3 STEVEN H. ROSENBAUM
 Chief, Special Litigation Section
 4 BENJAMIN "BO" TAYLOE
 Deputy Chief
 5 MATHEW S. SCHUTZER (N.Y. Bar No. 5136007)
 Trial Attorney
 6 United States Department of Justice, Civil Rights Division
 Special Litigation Section
 7 950 Pennsylvania Avenue, NW - PHB
 Washington, DC 20530
 8 Telephone: (202) 616-3179
 Facsimile: (202) 514-4883
 9 E-mail: Mathew.schutz@usdoj.gov

10 EILEEN M. DECKER
 United States Attorney
 11 DOROTHY A. SCHOUTEN
 Assistant United States Attorney
 12 Chief, Civil Division
 JOANNA HULL (CA State Bar No. 227153)
 13 Assistant United States Attorney
 Chief, Civil Rights Section
 14 300 North Los Angeles Street, Suite 7516
 Los Angeles, California 90012
 15 Telephone: (213) 894-6585
 Facsimile: (213) 894-7819
 16 Email: Joanna.hull@usdoj.gov

17 Attorneys for the United States of America

18 UNITED STATES DISTRICT COURT
 19 FOR THE CENTRAL DISTRICT OF CALIFORNIA

20 JERRY THOMAS, by and through his
 Guardian ad Litem BEVERLY
 21 THOMAS, SEAN BENISON, and JUAN
 PALOMARES,

22 Plaintiffs,

23 v.

24 JENNIFER KENT, Director of the
 Department of Health Care Services,
 25 State of California DEPARTMENT OF
 26 HEALTH CARE SERVICES,

27 Defendants.

2:CV14-08013-FMO (AGRx)

**SUPPLEMENTAL STATEMENT OF
 INTEREST OF THE UNITED STATES
 OF AMERICA**

Date: August 18, 2016
 Time: 10:00 a.m.
 Courtroom: 22
 Judge: Hon. Fernando M. Olguin
 Trial Date: October 11, 2016
 Action Filed: October 16, 2014

SUPPLEMENTAL STATEMENT OF INTEREST OF THE
UNITED STATES OF AMERICA

In connection with the Plaintiffs' renewed motion for summary judgment, ECF No. 151, the United States hereby incorporates by reference and supplements its Statement of Interest filed on March 29, 2016. ECF No. 112 ("SOI"). Although the State has since submitted a Waiver amendment for CMS approval, *see generally* Jt. Mem. Mot. Summ. J. 9:12-10:13, ECF No. 152, the legal analysis the Court must undertake is unchanged: has the State "ensure[d]" that individuals subject to a cost limitation "who require additional care to remain in the community will have the necessary alternative services identified and put in place to avoid unnecessary institutionalization[?]" SOI at 6:15-17 (citing *Brantley v. Maxwell-Jolly*, 656 F. Supp. 2d 1161, 1174 (N.D. Cal. 2009)).

As the United States noted in its SOI, a State's compliance with its Medicaid obligations and its compliance with the ADA are "independent legal obligations." SOI at 2, n.4 ("Federal approval of a waiver application does not address the existence of a violation of the ADA."). Thus, while a State may cap the services it provides through a Medicaid waiver, as California has done in the operative Waiver, it is not exempt from providing services in excess of that cap in order "to comply with the ADA or other laws." SOI at 5:7-15 (quoting U.S. Dep't of Justice, *Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C.* n.4 (June 22, 2011), http://www.ada.gov/olmstead/q&a_olmstead.htm). Defendants' arguments in opposition to summary judgment appear to blur that distinction, by implying that the State has complied with its ADA obligations simply by submitting to CMS a Waiver amendment which purports to remove the individual cost limitations. *See, e.g.*, Defs'. Suppl. Br. Opp'n Mot. Summ. J. 5:5-6, ECF No. 157 ("[T]here is nothing more the Department can do at the present time to remove the individual cost limits from the current Waiver.").

1 Defendants’ narrow focus on the steps the State can take to remove the individual cost
2 limits from the current Waiver ignores the steps it could take to otherwise comply with
3 the ADA, including by example using state-only dollars to fund services in excess of the
4 currently applicable cost limits. *See, e.g.*, SOI at 6, n. 9 (noting that the State intended
5 “to use state-only dollars to fund Waiver costs over individual cost limits attributable to
6 [In-Home Supportive Services] and [Waiver Personal Care Services] overtime rather
7 than reduce services to Waiver participants.”) (second alteration in original). Moreover,
8 Defendants’ narrow focus on the steps the state can take to remove the individual cost
9 limits from the current Waiver ignores the legal reality that federal approval of the
10 proposed amendment will not *necessarily* bring the State into compliance with the ADA.
11 SOI at 2, n.4. Absent establishing a fundamental alteration defense, *see* SOI at 4, n.7,
12 with or without an amended Waiver the State must operate its service system in a
13 manner which ensures that, on an individual level, “services will be identified and in
14 place for Plaintiffs” to avoid needless institutionalization. SOI at 5:16-6:4 (citing
15 *Brantley*, 656 F. Supp. 2d at 1174 and *V.L. v. Wagner*, 669 F. Supp. 2d 1106, 1122 (N.D.
16 Cal. 2009)).

17 The United States encourages the Court to assess Plaintiffs’ motion in light of the
18 principles set forth in its SOI, as supplemented above.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: August 4, 2016

EILEEN M. DECKER
United States Attorney

DOROTHY A. SCHOUTEN
Assistant United States Attorney
Chief, Civil Division

/s/ Joanna Hull
JOANNA HULL
Assistant United States Attorney
Chief, Civil Rights Section

Respectfully submitted,

VANITA GUPTA
Principal Deputy Assistant Attorney General
Civil Rights Division

EVE L. HILL
Deputy Assistant Attorney General

STEVEN H. ROSENBAUM
Chief, Special Litigation Section

BENJAMIN "BO" TAYLOE
Deputy Chief

/s/ Mathew S. Schutzer
MATHEW S. SCHUTZER
Trial Attorney

Attorneys for the United States of America