

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  
HEALTH CARE SERVICES,  
26

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](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.

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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