APPENDIX

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Appendix A

Court of Appeal, First Appellate District, Division Four – NO. A161478

S279491

IN THE SUPREME COURT OF CALIFORNIA

En Banc

AARON HASHIM et al., Plaintiffs and Appellants,

v.

MALIA M. COHEN, as State Controller, etc. et al., Defendants and Respondents.

SUPREME COURT
FILED

MAY 31 2023

Jorge Navarrete Clerk

Deputy

The petition for review is denied.

GUERRERO
Chief Justice

Appendix B

Filed 2/28/23 Hashim v. Cohen CA1/4

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

AARON HASHIM et al., Plaintiffs and Appellants, v. MALIA M. COHEN, as State Controller, etc., et al., Defendants and Respondents.	161478 (San Francisco City & County Super. Ct. No. CGC-13-531294)

Plaintiffs filed this purported class action lawsuit in 2013, alleging that the State Controller[1] (the Controller or defendant) violated their constitutional rights with respect to property governed by the Unclaimed Property Law (UPL) (Code Civ. Proc.[2], § 1500 et seq.). Among other allegations, they asserted causes of action under 42 United States Code section 1983 claiming that the Controller violated their rights under the takings and due process clauses of the United States Constitution.

After many years of litigation, the trial court sustained defendant's demurrer to plaintiffs' third amended complaint without leave to amend and entered the judgment at issue. Because plaintiffs have failed to satisfy their burden of demonstrating reversible error, we affirm.

BACKGROUND

Plaintiffs' lawsuit stems from the Controller's allegedly unconstitutional treatment of plaintiffs' property under the UPL. Plaintiffs alleged that they were the owners of certain unclaimed property—specifically, money in an amount less than $50. Plaintiffs also alleged that the Controller does not request owner-identifying information for unclaimed property with a value of less than $50, violating the UPL and effecting a permanent deprivation and

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[1] Plaintiffs originally named John Chiang as the Controller when they filed their operative third amended complaint. In January 2023, Malia M. Cohen was sworn into office as Controller, replacing Mr. Chiang's predecessor.

[2] All further statutory references are to the Code of Civil Procedure unless otherwise stated.

taking of their property without constitutional "*Mullane*-style"[3] notice. They asserted causes of action for: (1) declaratory relief; (2) deprivation of the constitutional right to procedural due process in violation of 42 United States Code section 1983[4]; (3) unconstitutional taking of personal property in violation of 42 United States Code section 1983; (4) violation of the UPL; and (5) breach of fiduciary duty. The court sustained a demurrer with leave to amend as to plaintiffs' first, second, and fourth causes of action, and without leave to amend as to their third and fifth causes of action.

Plaintiffs filed a first amended complaint, then a second amended complaint following defendant's successful demurrer and motion to strike.

The court sustained defendant's demurrer to plaintiffs' second amended complaint without leave to

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[3] *Mullane v. Cent. Hanover Bank & Trust Co. (1950)* 339 U.S. 306 (*Mullane*).

[4] This statute provides, "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable." (42 U.S.C. § 1983.)

amend on the claim that the Controller violated the UPL by failing to request identifying information for owners of unclaimed property valued at less than $50. The court granted plaintiffs leave to amend their remaining claims for declaratory relief and deprivation of procedural due process under 42 United States Code section 1983. With respect to the latter claim, the court found that plaintiffs could not state a claim against the Controller individually due to the doctrine of qualified immunity, but it granted plaintiffs leave to amend as they "may be able to amend the [second amended complaint] to state a cause of action against the State directly to the extent they seek damages equal to the amount of the property held in trust only or an injunction."

Plaintiffs filed a third amended complaint (TAC) in December 2014 against the Controller in his official capacity, alleging claims for declaratory relief and deprivation of procedural due process in violation of 42 United States Code section 1983. Defendant demurred to the TAC and moved to strike it for noncompliance with the order allowing plaintiffs leave to amend. The trial court granted defendant's motion to strike and ruled that the demurrer was moot. In an unpublished opinion, this court reversed the judgment that followed the trial court's grant of defendant's motion to strike, but we did not pass on the merits of defendant's demurrer to the TAC in light of the trial court's ruling that the demurrer was moot. (*Hashim v. Yee* (Sept. 4, 2019, A147670) [nonpub.].)

On remand, defendant demurred to the TAC. Prior to the demurrer hearing, plaintiffs filed a motion for a temporary restraining order (TRO) and preliminary injunction. The trial court denied

plaintiffs' motion and it subsequently sustained defendant's demurrer without leave to amend. In its order sustaining the demurrer, the court reviewed federal decisions in similar litigation initiated by plaintiffs' counsel challenging the constitutionality of the UPL (the *Taylor* decisions discussed, *post*), and it found that the claims in the TAC had been previously rejected in its own prior decisions and those of the Ninth Circuit. Plaintiffs timely appealed from the subsequent judgment.

DISCUSSION

As best we can glean from plaintiffs' briefing, plaintiffs seek to challenge the trial court's rulings that they did not state a claim under 42 United States Code section 1983 for violations of the takings and due process clauses of the United States Constitution.[5]

"Our standard of review is well established. We accept as true the well-pleaded allegations in the operative complaint. [Citation.] ' " ' "We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed." [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.]' " [Citation.] We

[5] The pertinent ruling sustaining the demurrer without leave to amend on plaintiffs' claims arising from alleged violations of the takings clause is the order on defendant's first demurrer, and the pertinent ruling with respect to the claims for alleged violation of the due process clause is the demurrer to the TAC.

likewise accept facts that are reasonably implied or may be inferred from the complaint's express allegations. [Citations.] " ' "A demurrer tests the legal sufficiency of the complaint . . . ." [Citations.] On appeal from a dismissal after an order sustaining a demurrer, we review the order de novo, exercising our independent judgment about whether the complaint states a cause of action as a matter of law.' " ' " (*Amiodarone Cases* (2022) 84 Cal.App.5th 1091, 1100.)

"Although our review is de novo, it is plaintiffs' burden to affirmatively demonstrate that [a ruling on] demurrer was erroneously sustained as a matter of law, which means that plaintiffs must show that they pleaded facts sufficient to establish each element of each cause of action." (*Amiodarone Cases*, *supra*, 84 Cal.App.5th at pp. 1100–1101.)

A. The UPL

Because this lawsuit involves the UPL, we begin with a discussion of that statutory scheme. " 'The UPL establishes the conditions under which certain unclaimed personal property escheats to the state. The UPL is not a permanent or "true" escheat statute. Instead, it gives the state custody and use of unclaimed property until such time as the owner claims it. Its dual objectives are "to protect unknown owners by locating them and restoring their property to them and to give the state rather than the holders of unclaimed property the benefit of the use of it, most of which experience shows will never be claimed." ' " (*Azure Limited v. I-Flow Corp.* (2009) 46 Cal.4th 1323, 1328.)

Title to certain categories of unclaimed property escheats to the state when the conditions of non-use specified by statute occur. (See, e.g., §§ 1300, subd. (c), 1510–1511, 1513–1520.) Prior to escheat, and subject to an exception not relevant here[6], the holder of certain properties "shall make reasonable efforts" to notify property owners by mail, or, if the owner has consented to electronic notice, electronically, that the owner's property will escheat. (§§ 1513.5, subds. (a)–(c) [notice for property valued at $50 or more for deposit, account, shares, or other interest in banking or financial organization]; 1514, subds. (a), (b) [notice for safe deposit box or repository]; 1516, subds. (a), (b), (d) [notice for dividends and securities]; 1520, subds. (a), (b) [notice for tangible and other intangible personal property valued at $50 or more].)

The holder of property must also report to the Controller "the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of at least twenty-five dollars ($25) escheated under this chapter." (§ 1530, subd. (b)(2).)[7] The statute mandates specific dates, depending on the property's classification, by which a holder must report the escheated property to the Controller. (§ 1530, subd. (d).)

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[6] The exception to the requirement of mailed notice is that the holder need not mail notice to an owner whose address the holder's records disclose to be inaccurate. (E.g., § 1513.5, subd. (a).)

[7] Prior to July 1, 2014, these reporting requirements existed for property with a value of at least $50. (§ 1530, subd. (b)(1).)

After the holder has reported the property under section 1530, but before the property is given to the Controller, "[t]he Controller shall mail a notice to each person having an address listed in the report who appears to be entitled to property of the value of fifty dollars ($50) or more escheated under this chapter." (§ 1531, subd. (b).)[8] The Controller's notice must state that property is being held, name the addressee who may be entitled to it, and give the name and address of the holder. (§ 1531, subd. (c).) The notice must also include "[a] statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the notice, the property will be placed in the custody of the Controller and may be sold or destroyed pursuant to this chapter, and all further claims concerning the property or, if sold, the net proceeds of its sale, must be directed to the Controller." (§ 1531, subd. (c)(3).)

If the owner fails to timely establish his or her right to receive any property specified in the section 1530 report to the satisfaction of the holder, then the property must be transferred to the Controller in the time specified by the statute. (§ 1532, subds. (a)–(b).) As noted, the transferred property does not "permanently escheat to the state." (§ 1501.5, subd. (a).) Rather, the Controller assumes custody of the property, and the owner " 'may file a claim to the

[8] If the holder's report includes an owner's Social Security number, the Controller shall request the Franchise Tax Board (FTB) to provide an address for the owner. (§ 1531, subd. (b).) If the FTB provides an address different from that provided by the holder, the Controller sends notice to the FTB address. (*Ibid.*) Otherwise, the Controller mails notice to the address provided by the holder. (*Ibid.*)

property or to the net proceeds from its sale.' " (*Azure Limited v. I-Flow Corp.*, *supra*, 46 Cal.4th at p. 1330; see § 1540, subd. (a) [any person claiming ownership of property paid or delivered to Controller under UPL may file a claim on form prescribed by Controller].)

In addition to mailing notice as required under section 1531, subdivisions (b) and (c), the Controller is required to "cause a notice to be published in a manner that the Controller determines to be reasonable, which may include, but not be limited to, newspapers, Internet Web sites, radio, television, or other media." (§ 1531, subd. (a).)[9] And after taking custody of the escheated property, the Controller is required to "conduct a notification program designed to inform owners about the possible existence of unclaimed property received pursuant to this chapter." (§ 1531.5, subd. (a).)

The Controller may sell escheated property with commercial value (§ 1563), but such sale may not occur sooner than 18 months after the final date for filing the section 1530 report. (See §§ 1563, subds. (a) & (b) [sale no sooner than 18 months and no later than 20 months for securities].) Money received by the Controller is deposited into an Unclaimed Property Fund, and claims are paid out of this fund. (§ 1564, subds. (a) & (b)(1).) Any person aggrieved by the Controller's claim decision or the Controller's failure

[9] Prior to 2018, the Controller was required to provide notice "in a newspaper of general circulation which the Controller determines is most likely to give notice to the apparent owner of the property." (Former § 1531, subd. (a).)

to timely render a claim decision may commence an action to establish the claim in court. (§ 1541.)

B. The Taylor Decisions

Given the reliance of the trial court and the parties on the Ninth Circuit's *Taylor* decisions, we briefly review them. In *Taylor v. Westley (9th Cir. 2005) 402 F.3d 924, 926 (Taylor I), two people* sued the Controller after their shares of stock escheated under the UPL and the Controller sold the shares. They asserted claims for violation of the due process and takings clauses of the United States Constitution. (*Taylor I*, at p. 929.) The district court dismissed the case on Eleventh Amendment grounds, and *Taylor I* reversed (*Taylor I*, at p. 936), but the Ninth Circuit found that no takings claim could be maintained by the plaintiffs given the custodial, nonpermanent nature of the transfer of plaintiffs' property under the UPL. (*Taylor I*, at p. 936.)

Taylor II issued after the district court denied the plaintiffs' motion for a preliminary injunction challenging the adequacy of the notice provided prior to transfer of unclaimed property to the Controller. (*Taylor v. Westley (9th Cir. 2007)* 488 F.3d 1197, 1201 (*Taylor II*).) The Controller argued that the UPL provided constitutionally adequate notice by requiring that: (1) the state place newspaper advertisements stating that people concerned about possible escheat may check a website to see if their names or property are listed; (2) the state mail written notice to some, but not all, individuals whose property has been escheated; and (3) corporations, banks and other holders of property provide notice to individuals. (*Taylor II, at p. 1201*.) The Ninth Circuit

disagreed. (*Ibid.*) Emphasizing the Controller's practice of immediately selling transferred and escheated property, the court found that the plaintiffs had a strong likelihood of success on the merits. *(Id. at pp. 1200–1201.)* The court questioned the constitutionality of the newspaper ad, and it noted that the ad and the Controller's mailings "[did] not respond to the requirement that notice be given *before* an individual's control of his property is disturbed." (*Id. at p. 1201.)* Finally, it found that the *holder's* obligation to provide notice did not satisfy the State's obligation to give notice. (*Ibid.)*

On remand, the district court issued a preliminary injunction, and, in 2007, the Legislature "eliminated the statutory and administrative procedure that [the Ninth Circuit] had determined to be unconstitutional" and "promulgated an entirely new statutory procedure addressing escheat." (*Taylor v. Westly (9th Cir. 2008)* 525 F.3d 1288, 1289 (*Taylor III*).) After the district court dissolved the injunction, the plaintiffs appealed. *Taylor III* rejected the plaintiffs' facial challenge to the UPL, finding, "On its face, the new procedure complies with the due process standard established by the Supreme Court in *Mullane v. Cent. Hanover Bank & Trust Co. [(1950)]* 339 U.S. 306], and *Jones v. Flowers [(2006)]* 547 U.S. 220 [ ]." (*Taylor III,* at p. 1289; accord, *Suever v. Connell (9th Cir. 2009)* 579 F.3d 1047, 1054, fn. 4 [amended version of UPL is facially constitutional].)

In *Taylor V,* the Ninth Circuit upheld the dismissal of the plaintiffs' as-applied due process claim. (*Taylor v. Yee* (2015) 780 F.3d 928, 931 (*Taylor V*).) There, plaintiffs asserted that the

Controller failed to provide constitutionally adequate notice before the transfer of unclaimed property to her custody because she did not take additional steps to locate and notify property owners by consulting available government databases. (*Id.* at pp. 935, 937.) The court confirmed that *Taylor III* had held that the new UPL provided constitutionally adequate notice on its face (*Taylor V*, at pp. 934–935), and it rejected plaintiffs' as-applied challenge, finding that the due process clause did not require the Controller to search for owner addresses on available government databases. (*Taylor V*, at pp. 938–939.)

C. Analysis

1. The 42 United States Code Section 1983 Claims for Violation of the Takings Clause

Turning first to plaintiffs' allegations premised on the takings clause, the Fifth Amendment prohibits the taking of private property for public use without just compensation. (See *Texaco, Inc. v. Short* (1982) 454 U.S. 516, 523 & fn. 11.) Plaintiffs do not establish reversible error with respect to the trial court's ruling on this claim.

First, and importantly, plaintiffs do not cite to the operative pleading or set forth its allegations in their briefing. As such, they fail to demonstrate any reversible error in the ruling below. (See *Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43 (*Rakestraw*) [plaintiff bears burden of demonstrating trial court erroneously sustained demurrer as a matter of law and must show complaint alleges facts sufficient to establish every

element of each cause of action].) The judgment may be affirmed on this basis alone.

When we dig through the record to locate and then parse plaintiffs' allegations, we find that their takings claims are substantively deficient. Plaintiffs alleged that they held a protected property right in money in amounts under $50. They also alleged that the Controller holds unclaimed property in custody for the true owner, and the Controller is required to return property transferred upon the owner's claim. Plaintiffs' money is in the custodial Unclaimed Property Fund (§ 1564, subd. (a)[10]). Plaintiffs' allegations establish knowledge that their property is held in custody, yet plaintiffs do not allege that they sought return of their property from the Controller or that the Controller denied their requests. Based on plaintiffs' allegations, the trial court was correct in finding that plaintiffs have not alleged that the government took a property interest. (*Taylor I*, *supra*, 402 F.3d at p. 936 [rejecting takings claim because plaintiffs' property under UPL "has not been taken at all, but has merely been held in trust for them by the Controller"].)

Furthermore, any property deprivation that may have occurred resulted from plaintiffs' inattention to their property, not a government taking for which just compensation is due. In *Texaco, Inc. v. Short*, *supra*, 454 U.S. 516, the court rejected a takings challenge and approved a statute providing that mineral

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[10] "All money received under this chapter, including the proceeds from the sale of property under Section 1563, shall be deposited in the Unclaimed Property Fund in an account titled 'Abandoned Property.' " (§ 1564, subd. (a).)

interests would revert to the surface owner when those interests had not been used by their owner in specified ways for twenty years, unless the owner recorded a claim before then. The court explained that states had long been authorized to terminate or transfer unexercised property interests considered abandoned, and it found the government was not required to pay compensation: "In ruling that private property may be deemed to be abandoned and to lapse upon the failure of its owner to take reasonable actions imposed by law, this Court has never required the State to compensate the owner for the consequences of his own neglect. . . . It is the owner's failure to make any use of the property—and not the action of the State—that causes the lapse of the property right; there is no 'taking' that requires compensation."[11] (*Texaco*, at p. 530.)

Applying *Texaco*, courts have rejected takings claims for the interest earned by escheated property held by the Controller under the UPL, reasoning that California need not compensate the plaintiffs for the consequences of their neglect. (*Turnacliff v. Westly* (9th Cir. 2008) 546 F.3d 1113, 1119–1120; *Suever v. Connell, supra,* 579 F.3d at p. 1057; *Morris v. Chiang* (2008) 163 Cal.App.4th 753, 760.) This reasoning defeats plaintiffs' claims premised on violations of the takings clause.

[11] Plaintiffs do not contest the Legislature's power to enact the UPL, nor do plaintiffs challenge the conditions upon which the UPL deems property interests to have escheated.

2. The 42 United States Code Section 1983 Claims for Violation of Due Process

Nor are we persuaded that the court erred in sustaining defendant's demurrer to plaintiffs' claims based on alleged violation of their rights to due process. The due process clause requires the government to provide notice and a meaningful opportunity to be heard before finally depriving an individual of a property right. (*Mathews v. Eldridge* (1976) 424 U.S. 319, 333–334; *Mullane*, *supra*, 339 U.S. at p. 314 ["An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."].) Due process is a flexible concept, calling for such procedural protections as a particular situation demands. (*Mathews*, at pp. 333–334.) The nature of the property deprivation itself determines what procedural protections the Constitution requires. (*Mathews,* at pp. 334–335.)

First, plaintiffs again fail to satisfy their burden to demonstrate that they pleaded valid claims under 42 United States Code section 1983 premised on the alleged violation of their due process rights because they entirely fail to cite to the operative pleading or set forth its allegations in their brief. (See *Rakestraw*, *supra*, 81 Cal.App.4th at p. 43.) As with plaintiffs' takings challenge, this failing alone mandates affirmance of the judgment.

When we again scour the record and briefing in an effort to divine the basis of plaintiffs' due process contentions, we find them wanting. We perceive plaintiffs to advance three main contentions. First, plaintiffs appear to argue that the Controller violated their rights to due process because the Controller does not search available databases for owner addresses to mail notices prior to transfer of escheated property under section 1531, subdivision (b). Second, plaintiffs contend that their rights to due process were infringed because the Controller does not collect owner information for property with a value of under $50 in section 1530 reports, and the UPL does not require the Controller to mail a notice to owners of escheated property with a value of under $50 before taking custody of the property. Plaintiffs also appear to argue that the failure to collect owner-identifying information for escheated property valued under $50 effected a permanent deprivation of their property in violation of due process. We find no cause to reverse the judgment for the reasons set forth below.

To the extent plaintiffs premise their claims on a lack of direct mail notice under the UPL before their property escheated to the Controller, they demonstrate no basis for reversal. Notably, plaintiffs concede in their appellate brief, as they did in their opposition to the demurrer below, that the UPL is facially constitutional. On its face, the UPL requires direct mail notice prior to transfer of escheated property from the holder to the Controller only for properties valued at $50 *or more*. (§ 1531, subd. (b).) The necessary consequence of Plaintiffs' concession that the UPL is facially valid is a concomitant concession that the UPL is not constitutionally infirm

for failing to require the Controller to provide pre-escheat direct mail notice to owners of property valued *under* $50. Plaintiffs seem to have suggested below that they were pursuing an as-applied constitutional challenge, but in their appellate briefing, they do not point to any allegations in their complaint to attempt to establish that they have pleaded a valid claim that section 1531, subdivision (b), as applied, deprived them of due process.

Finally, plaintiffs' claims also fail because they have not alleged facts showing that the Controller permanently deprived them of their property without due process. Plaintiffs rely on *Mullane*'s rule that procedural due process must be provided for any proceeding to be accorded finality (*Mullane*, *supra*, 339 U.S. at p. 314), and their due process claims ultimately appear founded on the premise that the Controller has permanently seized their property. But plaintiffs allege their property—sums of money under $50—is in the Unclaimed Property Fund, and they allege that the Controller is required to return property transferred under the UPL upon the owner's claim. While plaintiffs allege that "it is difficult, if not impossible," for owners of property valued at less than $50 to recover their property because the Controller allegedly does not maintain owner-identifying information therefor, at the same time, plaintiffs allege that the Controller gives verbal claim instructions to owners of property under $50 for how to "prove up" their claims. Plaintiffs do not allege that they sought return of their property from the Controller, or that the Controller denied their claims. As such, plaintiffs have not sufficiently alleged that

they suffered a permanent deprivation of their property.

3. Alleged "Underground" Regulations

Plaintiffs devote a section of their opening appellate brief to the argument that the Controller failed to promulgate regulations governing the claim process pursuant to California's Administrative Procedure Act (Gov. Code, § 11340 et seq.) (APA)), but this contention does not assist plaintiffs in obtaining reversal. Without describing their content, plaintiffs contend that the Controller issued guidelines, bulletins, forms, and notices that constitute void "underground regulations." But plaintiffs did not plead a stand-alone claim seeking to void the Controller's alleged underground regulations for violation of the APA, and, as discussed, *post,* they do not seek leave to amend their complaint. To the extent plaintiffs claim that the Controller's failure to promulgate regulations under the APA somehow violated their rights to procedural due process, they do not cite any authority supporting this bare proposition, nor do they allege any facts regarding the process provided by the alleged underground regulations. Indeed, plaintiffs do not even allege that they sought to recover their property through this process. Plaintiffs' argument regarding the APA thus does nothing to advance their cause.

4. Amendment

The party seeking to amend bears the burden of showing the defects in its complaint are capable of being cured by amendment. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) "To satisfy that burden on appeal, a plaintiff 'must show in what

manner he can amend his complaint and how that amendment will change the legal effect of his pleading.' [Citation.] The assertion of an abstract right to amend does not satisfy this burden." (*Rakestraw*, *supra*, 81 Cal.App.4th at p. 43.) The plaintiff must clearly and specifically state "the legal basis for amendment, i.e., the elements of the cause of action," as well as the "factual allegations that sufficiently state all required elements of that cause of action." (*Ibid.*) Because plaintiffs do not argue they are entitled to amend their complaint or that the trial court erred in denying leave to amend, they necessarily fail to provide any basis on appeal to grant leave to amend.

D. The Preliminary Injunction Ruling

Because plaintiffs request that we order the trial court to enter a preliminary injunction on remand, we briefly address, and deny, this request. Plaintiffs' notice of appeal indicates an appeal of the trial court's order denying the TRO and preliminary injunction, as well as an appeal from the judgment. The court clerk served the file-stamped, separately appealable order denying the TRO and preliminary injunction (§ 904.1, subd. (a)(6)) on May 14, 2020, so this court lacks jurisdiction over plaintiffs' untimely October 15, 2020 notice of appeal from that order. (Cal. Rules of Court, rule 8.104(a)(1)(A), (e) [notice of appeal must be filed 60 days after court clerk serves a filed-endorsed copy of an appealable order showing date of service].) In any event, an injunction is not warranted where, as here, plaintiffs have not established a viable claim for relief. "A preliminary injunction is an interim remedy designed to maintain the status quo pending a decision on the merits. [Citation.] It is not, in itself,

a cause of action. Thus, a cause of action must exist before injunctive relief may be granted." (*MaJor v. Miraverde Homeowners Assn.* (1992) 7 Cal.App.4th 618, 623.)

DISPOSITION

The judgment is affirmed.

BROWN, J.

WE CONCUR:

POLLAK, P. J.
GOLDMAN, J.
Hashim v. Yee (A161478)

Appendix C

Code of Civil Procedure

Title 10, Chapter 7

Unclaimed Property Law

§ 1510. Escheat of intangible personal property

Unless otherwise provided by statute of this state, intangible personal property escheats to this state under this chapter if the conditions for escheat stated in Sections 1513 through 1521 exist, and if:

(a) The last known address, as shown on the records of the holder, of the apparent owner is in this state.

(b) No address of the apparent owner appears on the records of the holder and:

(1) The last known address of the apparent owner is in this state; or

(2) The holder is domiciled in this state and has not previously paid the property to the state of the last known address of the apparent owner; or

(3) The holder is a government or governmental subdivision or agency of this state and has not previously paid the property to the state of the last known address of the apparent owner.

(c) The last known address, as shown on the records of the holder, of the apparent owner is in a state that

does not provide by law for the escheat of such property and the holder is (1) domiciled in this state or (2) a government or governmental subdivision or agency of this state.

(d) The last known address, as shown on the records of the holder, of the apparent owner is in a foreign nation and the holder is (1) domiciled in this state or (2) a government or governmental subdivision or agency of this state.

Code of Civil Procedure

Title 10, Chapter 7

Unclaimed Property Law

§ 1511. Escheat of money orders, travelers checks, etc.; conditions

(a) Any sum payable on a money order, travelers check, or other similar written instrument (other than a third-party bank check) on which a business association is directly liable escheats to this state under this chapter if the conditions for escheat stated in Section 1513 exist and if:

(1) The books and records of such business association show that such money order, travelers check, or similar written instrument was purchased in this state;

(2) The business association has its principal place of business in this state and the books and records of the business association do not show the state in which such money order, travelers check, or similar written instrument was purchased; or

(3) The business association has its principal place of business in this state, the books and records of the business association show the state in which such money order, travelers check, or similar written instrument was purchased, and the laws of the state of purchase do not provide for the escheat of the sum payable on such instrument.

(b) Notwithstanding any other provision of this chapter, this section applies to sums payable on money orders, travelers checks, and similar written instruments deemed abandoned on or after February 1, 1965, except to the extent that such sums have been paid over to a state prior to January 1, 1974. For the purposes of this subdivision, the words "deemed abandoned" have the same meaning as those words have as used in Section 604 of Public Law Number 93-495 (October 28, 1974), 88th Statutes at Large 1500.

Code of Civil Procedure

Title 10, Chapter 7

Unclaimed Property Law

§ 1513.5. Notice of escheat by banking or financial organization

(a) Except as provided in subdivision (c), if the holder has in its records an address for the apparent owner, which the holder's records do not disclose to be inaccurate, every banking or financial organization shall make reasonable efforts to notify any owner by mail or, if the owner has consented to electronic notice, electronically, that the owner's deposit, account, shares, or other interest in the banking or financial organization will escheat to the state pursuant to clause (i), (ii), or (iii) of subparagraph (A) of paragraph (1), (2), or (6) of subdivision (a) of Section 1513. The holder shall give notice either:

(1) Not less than two years nor more than two and one-half years after the date of last activity by, or communication with, the owner with respect to the account, deposit, shares, or other interest, as shown on the record of the banking or financial organization.

(2) Not less than 6 nor more than 12 months before the time the account, deposit, shares, or other interest becomes reportable to the Controller in accordance with this chapter.

(b) The notice required by this section shall specify the time that the deposit, account, shares, or other

interest will escheat and the effects of escheat, including the necessity for filing a claim for the return of the deposit, account, shares, or other interest. The face of the notice shall contain a heading at the top that reads as follows: "THE STATE OF CALIFORNIA REQUIRES US TO NOTIFY YOU THAT YOUR UNCLAIMED PROPERTY MAY BE TRANSFERRED TO THE STATE IF YOU DO NOT CONTACT US," or substantially similar language. The notice required by this section shall, in boldface type or in a font a minimum of two points larger than the rest of the notice, exclusive of the heading, (1) specify that since the date of last activity, or for the last two years, there has been no owner activity on the deposit, account, shares, or other interest; (2) identify the deposit, account, shares, or other interest by number or identifier, which need not exceed four digits; (3) indicate that the deposit, account, shares, or other interest is in danger of escheating to the state; and (4) specify that the Unclaimed Property Law requires banking and financial organizations to transfer funds of a deposit, account, shares, or other interest if it has been inactive for three years. It shall also include a form, as prescribed by the Controller, by which the owner may declare an intention to maintain the deposit, account, shares, or other interest. If that form is filled out, signed by the owner, and returned to the banking or financial organization, it shall satisfy the requirement of clause (iii) of subparagraph (A) of paragraph (1), clause (iii) of subparagraph (A) of paragraph (2), or clause (iii) of subparagraph (A) of paragraph (6) of subdivision (a) of Section 1513. In lieu of returning the form, the banking or financial organization may provide a

telephone number or other electronic means to enable the owner to contact that organization. The contact, as evidenced by a memorandum or other record on file with the banking or financial organization, shall satisfy the requirement of clause (iii) of subparagraph (A) of paragraph (1), clause (iii) of subparagraph (A) of paragraph (2), or clause (iii) of subparagraph (A) of paragraph (6) of subdivision (a) of Section 1513. If the deposit, account, shares, or other interest has a value greater than two dollars ($2), the banking or financial organization may impose a service charge on the deposit, account, shares, or other interest for this notice in an amount not to exceed the administrative cost of mailing or electronically sending the notice and form and in no case to exceed two dollars ($2).

(c) Notice as provided by subdivisions (a) and (b) shall not be required for deposits, accounts, shares, or other interests of less than fifty dollars ($50), and, except as provided in subdivision (b), no service charge may be made for notice on these items.

(d) In addition to the notices required pursuant to subdivision (a), the holder may give additional notice as described in subdivision (b) at any time between the date of last activity by, or communication with, the owner and the date the holder transfers the deposit, account, shares, or other interest to the Controller.

(e) At the time a new account is opened with a banking or financial organization, the organization shall provide a written notice to the person opening the account informing the person that his or her

property may be transferred to the appropriate state if no activity occurs in the account within the time period specified by state law. If the person opening the account has consented to electronic notice, that notice may be provided electronically.

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§ 1514. Safe deposit box or other safekeeping depository, contents or proceeds of sale of contents; notice of escheat to state; default by owner

(a) The contents of, or the proceeds of sale of the contents of, any safe deposit box or any other safekeeping repository, held in this state by a business association, escheat to this state if unclaimed by the owner for more than three years from the date on which the lease or rental period on the box or other repository expired, or from the date of termination of any agreement because of which the box or other repository was furnished to the owner without cost, whichever last occurs.

(b) If a business association has in its records an address for an apparent owner of the contents of, or the proceeds of sale of the contents of, a safe deposit box or other safekeeping repository described in subdivision (a), and the records of the business association do not disclose the address to be inaccurate, the business association shall make reasonable efforts to notify the owner by mail, or, if the owner has consented to electronic notice, electronically, that the owner's contents, or the proceeds of the sale of the contents, will escheat to the state pursuant to this section. The business association shall give notice not less than 6 months and not more than 12 months before the time the

contents, or the proceeds of the sale of the contents, become reportable to the Controller in accordance with this chapter.

(c) The face of the notice shall contain a heading at the top that reads as follows: "THE STATE OF CALIFORNIA REQUIRES US TO NOTIFY YOU THAT YOUR UNCLAIMED PROPERTY MAY BE TRANSFERRED TO THE STATE IF YOU DO NOT CONTACT US," or substantially similar language. The notice required by this subdivision shall specify the date that the property will escheat and the effects of escheat, including the necessity for filing a claim for the return of the property. The notice required by this section shall, in boldface type or in a font a minimum of two points larger than the rest of the notice, exclusive of the heading, do all of the following:

(1) Identify the safe deposit box or other safekeeping repository by number or identifier.

(2) State that the lease or rental period on the box or repository has expired or the agreement has terminated.

(3) Indicate that the contents of, or the proceeds of sale of the contents of, the safe deposit box or other safekeeping repository will escheat to the state unless the owner requests the contents or their proceeds.

(4) Specify that the Unclaimed Property Law requires business associations to transfer the contents of, or the proceeds of sale of the contents of, a safe deposit box or other safekeeping repository to the Controller

if they remain unclaimed for more than three years.

(5) Advise the owner to make arrangements with the business association to either obtain possession of the contents of, or the proceeds of sale of the contents of, the safe deposit box or other safekeeping repository, or enter into a new agreement with the business association to establish a leasing or rental arrangement. If an owner fails to establish such an arrangement prior to the end of the period described in subdivision (a), the contents or proceeds shall escheat to this state.

(d) In addition to the notice required pursuant to subdivision (b), the business association may give additional notice in accordance with subdivision (c) at any time between the date on which the lease or rental period for the safe deposit box or repository expired, or from the date of the termination of any agreement, through which the box or other repository was furnished to the owner without cost, whichever is earlier, and the date the business association transfers the contents of, or the proceeds of sale of the contents of, the safe deposit box or other safekeeping repository to the Controller.

(e) The contents of, or the proceeds of sale of the contents of, a safe deposit box or other safekeeping repository shall not escheat to the state if, as of June 30 or the fiscal yearend next preceding the date on which a report is required to be filed under Section 1530, the owner has owned, with a banking organization providing the safe deposit box or other safekeeping repository, any demand, savings, or

matured time deposit, or account subject to a negotiable order of withdrawal, which has not escheated under Section 1513 and is not reportable under subdivision (d) of Section 1530.

(f) The contents of, or the proceeds of sale of the contents of, a safe deposit box or other safekeeping repository shall not escheat to the state if, as of June 30 or the fiscal yearend next preceding the date on which a report is required to be filed under Section 1530, the owner has owned, with a financial organization providing the safe deposit box or other safekeeping repository, any demand, savings, or matured time deposit, or matured investment certificate, or account subject to a negotiable order of withdrawal, or other interest in a financial organization or any deposit made therewith, and any interest or dividends thereon, which has not escheated under Section 1513 and is not reportable under subdivision (d) of Section 1530.

(g) The contents of, or the proceeds of sale of the contents of, a safe deposit box or other safekeeping repository shall not escheat to the state if, as of June 30 or the fiscal yearend next preceding the date on which a report is required to be filed under Section 1530, the owner has owned, with a banking or financial organization providing the safe deposit box or other safekeeping repository, any funds in an individual retirement account or under a retirement plan for self-employed individuals or similar account or plan pursuant to the internal revenue laws of the United States or the income tax laws of this state, which has not escheated under Section 1513 and is

not reportable under subdivision (d) of Section 1530.

(h) In the event the owner is in default under the safe deposit box or other safekeeping repository agreement and the owner has owned any demand, savings, or matured time deposit, account, or plan described in subdivision (e), (f), or (g), the banking or financial organization may pay or deliver the contents of, or the proceeds of sale of the contents of, the safe deposit box or other safekeeping repository to the owner after deducting any amount due and payable from those proceeds under that agreement. Upon making that payment or delivery under this subdivision, the banking or financial organization shall be relieved of all liability to the extent of the value of those contents or proceeds.

(i) For new accounts opened for a safe deposit box or other safekeeping repository with a business association on and after January 1, 2011, the business association shall provide a written notice to the person leasing the safe deposit box or safekeeping repository informing the person that his or her property, or the proceeds of sale of the property, may be transferred to the appropriate state upon running of the time period specified by state law from the date the lease or rental period on the safe deposit box or repository expired, or from the date of termination of any agreement because of which the box or other repository was furnished to the owner without cost, whichever is earlier.

(j) A business association may directly escheat the contents of a safe deposit box or other safekeeping

repository without exercising its rights under Article 2 (commencing with Section 1630) of Chapter 17 of Division 1 of the Financial Code.

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§ 1530. Report of escheated property

(a) Every person holding funds or other property escheated to this state under this chapter shall report to the Controller as provided in this section.

(b) The report shall be on a form prescribed or approved by the Controller and shall include:

(1) Except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of at least fifty dollars ($50) escheated under this chapter. This paragraph shall become inoperative on July 1, 2014.

(2) Except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of at least twenty-five dollars ($25) escheated under this chapter. This paragraph shall become operative on July 1, 2014.

(3) In the case of escheated funds of life insurance corporations, the full name of the insured or annuitant, and his or her last known address, according to the life insurance corporation's records.

(4) In the case of the contents of a safe deposit box or other safekeeping repository or in the case of other tangible property, a description of the property and the place where it is held and may be inspected by the Controller. The report shall set forth any amounts owing to the holder for unpaid rent or storage charges and for the cost of opening the safe deposit box or other safekeeping repository, if any, in which the property was contained.

(5) The nature and identifying number, if any, or description of any intangible property and the amount appearing from the records to be due, except that items of value under twenty-five dollars ($25) each may be reported in aggregate.

(6) Except for any property reported in the aggregate, the date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property.

(7) Other information which the Controller prescribes by rule as necessary for the administration of this chapter.

(c) If the holder is a successor to other persons who previously held the property for the owner, or if the holder has changed his or her name while holding the property, he or she shall file with his or her report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1 of each

year as of June 30 or fiscal yearend next preceding, but the report of life insurance corporations, and the report of all insurance corporation demutualization proceeds subject to Section 1515.5, shall be filed before May 1 of each year as of December 31 next preceding. The initial report for property subject to Section 1515.5 shall be filed on or before May 1, 2004, with respect to conditions in effect on December 31, 2003, and all property shall be determined to be reportable under Section 1515.5 as if that section were in effect on the date of the insurance company demutualization or related reorganization. The Controller may postpone the reporting date upon his or her own motion or upon written request by any person required to file a report.

(e) The report, if made by an individual, shall be verified by the individual; if made by a partnership, by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer or other employee authorized by the holder.

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Unclaimed Property Law
§ 1531. Notice and publication of lists of escheated property

(a) Within one year after payment or delivery of escheated property as required by Section 1532, the Controller shall cause a notice to be published, in a manner that the Controller determines to be reasonable, which may include, but not be limited to, newspapers, Internet Web sites, radio, television, or other media. In carrying out this duty, the Controller shall not use any of the following:

(1) Money appropriated for the Controller's audit programs.

(2) More money than the Legislature appropriates for this subdivision's purpose.

(3) A photograph in a notice.

(4) An elected official's name in a notice.

(b) Within 165 days after the final date for filing the report required by Section 1530, the Controller shall mail a notice to each person having an address listed in the report who appears to be entitled to property of the value of fifty dollars ($50) or more escheated under this chapter. If the report filed pursuant to Section 1530 includes a social security number, the Controller shall request the Franchise Tax Board to provide a current address for the apparent owner on

the basis of that number. The Controller shall mail the notice to the apparent owner for whom a current address is obtained if the address is different from the address previously reported to the Controller. If the Franchise Tax Board does not provide an address or a different address, then the Controller shall mail the notice to the address listed in the report required by Section 1530.

(c) The mailed notice shall contain all of the following:

(1) A statement that, according to a report filed with the Controller, property is being held to which the addressee appears entitled.

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the notice, the property will be placed in the custody of the Controller and may be sold or destroyed pursuant to this chapter, and all further claims concerning the property or, if sold, the net proceeds of its sale, must be directed to the Controller.

(d) This section is intended to inform owners about the possible existence of unclaimed property identified pursuant to this chapter.

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§ 1531.5. Notification program for possible owners of escheated property

(a) The Controller shall establish and conduct a notification program designed to inform owners about the possible existence of unclaimed property received pursuant to this chapter.

(b) Any notice sent pursuant to this section shall not contain a photograph or likeness of an elected official.

(c)(1) Notwithstanding any other law, upon the request of the Controller, a state or local governmental agency may furnish to the Controller from its records the address or other identification or location information that could reasonably be used to locate an owner of unclaimed property.

(2) If the address or other identification or location information requested by the Controller is deemed confidential under any laws or regulations of this state, it shall nevertheless be furnished to the Controller. However, neither the Controller nor any officer, agent, or employee of the Controller shall use or disclose that information except as may be necessary in attempting to locate the owner of unclaimed property.

(3) This subdivision shall not be construed to require disclosure of information in violation of federal law.

(4) If a fee or charge is customarily made for the information requested by the Controller, the Controller shall pay that customary fee or charge.

(d) Costs for administering this section shall be subject to the level of appropriation in the annual Budget Act.

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§ 1532. Payment or delivery of escheated property

(a) Every person filing a report as provided by Section 1530 shall, no sooner than seven months and no later than seven months and 15 days after the final date for filing the report, pay or deliver to the Controller all escheated property specified in the report. Any payment of unclaimed cash in an amount of at least two thousand dollars ($2,000) shall be made by electronic funds transfer pursuant to regulations adopted by the Controller. The Controller may postpone the date for payment or delivery of the property, and the date for any report required by subdivision (b), upon the Controller's own motion or upon written request by any person required to pay or deliver the property or file a report as required by this section.

(b) If a person establishes their right to receive any property specified in the report to the satisfaction of the holder before that property has been delivered to the Controller, or it appears that, for any other reason, the property may not be subject to escheat under this chapter, the holder shall not pay or deliver the property to the Controller but shall instead file a report with the Controller, on a form and in a format prescribed or approved by the Controller, containing information pertaining to the property subject to escheat.

(c) Any property not paid or delivered pursuant to subdivision (b) that is later determined by the holder to be subject to escheat under this chapter shall not be subject to the interest provision of Section 1577.

(d) The holder of any interest under subdivision (b) of Section 1516 shall deliver a duplicate certificate to the Controller or shall register the securities in uncertificated form in the name of the Controller. Upon delivering a duplicate certificate or providing evidence of registration of the securities in uncertificated form to the Controller, the holder, any transfer agent, registrar, or other person acting for or on behalf of the holder in executing or delivering the duplicate certificate or registering the uncertificated securities, shall be relieved from all liability of every kind to any person including, but not limited to, any person acquiring the original certificate or the duplicate of the certificate issued to the Controller for any losses or damages resulting to that person by the issuance and delivery to the Controller of the duplicate certificate or the registration of the uncertificated securities to the Controller.

(e) Payment of any intangible property to the Controller shall be made at the office of the Controller in Sacramento or at another location as the Controller by regulation may designate. Except as otherwise agreed by the Controller and the holder, tangible personal property shall be delivered to the Controller at the place where it is held.

(f) Payment is deemed complete on the date the electronic funds transfer is initiated if the settlement

to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If the settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(g) Any person required to pay cash by electronic funds transfer who makes the payment by means other than an authorized electronic funds transfer shall be liable for a civil penalty of 2 percent of the amount of the payment that is due pursuant to this section, in addition to any other penalty provided by law. Penalties are due at the time of payment. If the Controller finds that a holder's failure to make payment by an appropriate electronic funds transfer in accordance with the Controller's procedures is due to reasonable cause and circumstances beyond the holder's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that holder shall be relieved of the penalties.

(h) An electronic funds transfer shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, a Federal Reserve Wire Transfer (Fedwire), or by an international funds transfer. Banking costs incurred for the automated clearinghouse debit transaction by the holder shall be paid by the state. Banking costs incurred by the state for the automated clearinghouse credit transaction may be paid by the holder originating the credit. Banking costs incurred for the Fedwire transaction charged to the holder and the state shall be paid by the person originating the transaction. Banking costs

charged to the holder and to the state for an international funds transfer may be charged to the holder.

(i) For purposes of this section:

(1) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, modem, computer, or magnetic tape, so as to order, instruct, or authorize a financial institution to credit or debit an account.

(2) "Automated clearinghouse" means any federal reserve bank, or an organization established by agreement with the National Automated Clearing House Association or any similar organization, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and that authorizes an electronic transfer of funds between those banks or bank accounts.

(3) "Automated clearinghouse debit" means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the holder's bank account and crediting the state's bank account for the amount of payment.

(4) "Automated clearinghouse credit" means an automated clearinghouse transaction in which the holder, through its own bank, originates an entry crediting the state's bank account and debiting the

holder's bank account.

(5) "Fedwire" means any transaction originated by the holder and utilizing the national electronic payment system to transfer funds through federal reserve banks, pursuant to which the holder debits its own bank account and credits the state's bank account.

(6) "International funds transfer" means any transaction originated by the holder and utilizing the international electronic payment system to transfer funds, pursuant to which the holder debits its own bank account, and credits the funds to a United States bank that credits the Unclaimed Property Fund.

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§ 1532.1. Payment or delivery of property escheated to state

Notwithstanding Sections 1531 and 1532, property that escheats to the state pursuant to Section 1514 shall not be paid or delivered to the state until the earlier of (a) the time when the holder is requested to do so by the Controller or (b) within one year after the final date for filing the report required by Section 1530 as specified in subdivision (d) of Section 1530. Within one year after receipt of property as provided by this section, the Controller shall cause a notice to be published as provided in Section 1531.

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§ 1533. Exclusion of certain tangible personal property from notice requirement and escheat

Tangible personal property may be excluded from the notices required by Section 1531, shall not be delivered to the State Controller, and shall not escheat to the state, if the State Controller, in his discretion, determines that it is not in the interest of the state to take custody of the property and notifies the holder in writing, within 120 days from receipt of the report required by Section 1530, of his determination not to take custody of the property.