Nos. 23-195, 23-255

In the Supreme Court of the United States

AARON HASHIM, *et al.*,

Petitioners,

v.

MALIA M. COHEN, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS STATE CONTROLLER OF CALIFORNIA, *et al.*,

Respondents.

COOPER D. JOHNSON,

Petitioner,

v.

MALIA M. COHEN, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS STATE CONTROLLER OF CALIFORNIA, *et al.*,

Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FIRST APPELLATE DISTRICT

BRIEF IN OPPOSITION

ROB BONTA
Attorney General of California
MICHAEL J. MONGAN
Solicitor General
THOMAS S. PATTERSON
Senior Assistant Attorney General

JOSHUA PATASHNIK*
Deputy Solicitor General
ANYA M. BINSACCA
Supervising Deputy Attorney General
JAY C. RUSSELL
Deputy Attorney General

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
600 West Broadway, Suite 1800
San Diego, CA 92101
(619) 738-9628
Josh.Patashnik@doj.ca.gov
**Counsel of Record*

November 1, 2023

QUESTIONS PRESENTED

1. Whether this Court has jurisdiction to review the judgments of the state court of appeal below.

2. Whether the trial court correctly held that petitioners failed to state a claim that California's Unclaimed Property Law facially violates the Due Process Clause.

3. Whether the trial court correctly held that petitioners failed to state a claim that the Unclaimed Property Law facially violates the Takings Clause.

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STATEMENT

A. Legal Background

California's Unclaimed Property Law (UPL), Cal. Code Civ. Proc. § 1500 *et seq.*, serves two core purposes: "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." *Azure Ltd. v. I-Flow Corp.*, 46 Cal. 4th 1323, 1328 (2009). The State Controller, a respondent here, has primary responsibility for "safeguard[ing] and conserv[ing] the interests of all parties" in "all unclaimed property." Cal. Code Civ. Proc. § 1365. Any "property received by the state under" the UPL "shall not permanently escheat to the state," but instead is held by the Controller until the owner can "be reunited with their property." *Id.* § 1501.5(a), (c).

To achieve its goals, the UPL imposes obligations on entities "in possession of property . . . belonging to another," such as banks and insurance companies. Cal. Code Civ. Proc. § 1501(e); *see, e.g.*, *id.* §§ 1513-1520. The UPL generally requires those entities to identify California property in their custody that qualifies as unclaimed under the statute. For example, funds deposited in bank accounts meet that standard if, for "more than three years," the owner of the account has not "[i]ncreased or decreased the amount of the deposit," "[c]orresponded . . . with the banking organization concerning the deposit," or "[o]therwise indicated an interest in the deposit." *Id.* § 1513(a)(1)(A).

Before any unclaimed property escheats, however, holders of property and the Controller must attempt to reunite owners with their property. Between six and twelve months before property becomes unclaimed, holders generally must provide notice to the

property owner that the property may be transferred to the State if the owner does not contact the holder. *See* Cal. Code Civ. Proc. §§ 1513.5, 1514, 1516, 1520. That notice must be mailed to the owner's address of record (if known to the holder), or sent electronically "if the owner has consented to electronic notice." *Id.* §§ 1513.5(a), 1514(b), 1516(d), 1520(b). It must include the relevant account number or other identifying information, the date of last activity on the account or date of potential escheatment, and a statement that the property may be transferred to the State of California if the owner does not contact the holder to claim the property. *Id.* §§ 1513.5(b), 1514(c), 1516(d), 1520(b).

The UPL's notice provisions reflect a legislative judgment about what form of notice is required for certain low-dollar-value property. For some types of property—including dividends, business association distributions and profits, and contents of safe deposit boxes—notice is required for all unclaimed property without regard to value. *See* Cal. Code Civ. Proc. §§ 1514, 1516. But for other types of property, including bank deposits, individualized notice is required only if the value is $50 or more. *Id.* §§ 1513.5(c) 1520(b). Legislative history suggests that a primary reason for this threshold (and for the related $25 holder reporting threshold, *see infra* p. 3) is "to reduce the administrative burden and expense on holders." Leg. Comm. Comments—Senate, foll. Cal. Code Civ. Proc. Ann. § 1530 (Westlaw 2023). Also in recognition of the expenses associated with providing notice, the UPL generally allows holders to charge owners the administrative cost of sending the notice, up to a maximum of $2. Cal. Code Civ. Proc. § 1513.5(b); *see id.* §§ 1516(d), 1520(b).

The UPL imposes additional pre-escheatment requirements apart from the notice that holders must send to owners. Every holder must file a report with the Controller each year detailing the unclaimed property it holds. Cal. Code Civ. Proc. § 1530(d). For property valued at $25 or more, the report must include the "name, if known, and last known address, if any" of the owner, *id.* § 1530(b)(2), as well as the "nature," "identifying number, if any," and "amount" of the property, *id.* § 1530(b)(5). For property valued at less than $25, the statute allows holders to report items "in aggregate," *id.*—though the State Controller has "strongly discouraged" aggregate reporting because "[i]f account information is available, it should be provided to help the State Controller return property to its rightful owner."[1]

Before any escheatment occurs, the UPL requires the Controller to use the holder reports to send its own notice to owners of unclaimed property valued at $50 or more. Cal. Code Civ. Proc. § 1531(b). That notice must include the holder's name and address, and must inform the owner that the property will be placed in the custody of the Controller if the owner does not claim the property by a specified date. *Id.* § 1531(c). If the owner still does not claim the property, then the holder must "pay or deliver to the Controller" the unclaimed property, *id.* § 1532(a), and the State "assume[s]" the "care and custody" of all escheated property "for the benefit of those entitled thereto" until it is validly claimed, *id.* § 1361.

Even after escheatment, the State's efforts to reunite unclaimed property with owners continue.

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[1] State of California Unclaimed Property Holder Handbook 13 (Jan. 2023), https://tinyurl.com/5duwf9aj.

"Within one year after payment or delivery of escheated property," the Controller must publish notice "in a manner that the Controller determines to be reasonable, which may include . . . newspapers, Internet Web sites, radio, television, or other media." Cal. Code Civ. Proc. § 1531(a). The Controller must also "establish and conduct a notification program designed to inform owners about the possible existence of unclaimed property." *Id.* § 1531.5(a). In accordance with these requirements, the Controller maintains a website where individuals may search for unclaimed property in their name.[2]

Anyone who believes the State is in possession of their unclaimed property may file a claim for its return. Cal. Code Civ. Proc. § 1540(a). The Controller must consider each claim within 180 days of submission to determine if the claimant owns the property in question. *Id.* § 1540(b). Individuals may file claims and track the status of their claims at the Controller's website.[3]

B. Procedural Background

1. The petitioners in No. 23-195 are Aaron and Paul Hashim. They filed the operative third amended complaint in state trial court in 2014. Pet. App. 5a.[4] The complaint alleges that the Hashims reside in California and "believe that they are entitled . . . to amounts held by the Controller in sums less than $50[.]" Resp. App. 2a. According to the complaint, the

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[2] California State Controller, Unclaimed Property, https://ucpi.sco.ca.gov.

[3] *See id.*

[4] Except as otherwise noted, citations to the petition and petition appendix refer to the documents filed in No. 23-195.

Hashims also operate a California-based company that is "engaged in the business of reuniting owners with their lost and unclaimed property for a fee." *Id.* They allege that because of the UCL's notice provisions, they "have been unable to conduct their business in a lawful manner and have been prevented from notifying owners of their existing property if the property's value fails to exceed $50." *Id.* at 13a. They also allege that Paul Hashim "is a State Farm insurance policy holder and believes that the Controller may be holding some of his money in one of the aggregated accounts." *Id.*

The Hashims sought to represent a class of individuals "who are unable to claim their property from the Controller because their property escheated based on the value under $50 and the Controller does not identify the name of the property owner in [her] records." Resp. App. 14a. The Hashims advanced due process and takings claims under the federal and state constitutions, *id.* at 13a, 18a-19a, and sought declaratory and injunctive relief, *id.* at 17a-20a. The trial court sustained respondents' demurrer to the complaint without leave to amend, reasoning that each of the claims "had been previously rejected" in prior state and federal court decisions. Pet. App. 6a.

The court of appeal affirmed in an unpublished opinion. Pet. App. 3a; *see id.* at 3a-21a. It observed that the Hashims' appellate brief had failed to "cite to the operative pleading or set forth its allegations in their briefing," as California law requires. *Id.* at 13a; *see id.* at 16a (citing *Rakestraw v. Cal. Physicians' Serv.*, 81 Cal. App. 4th 39, 43 (2000)). Under that state law requirement, "this failing alone mandates affirmance of the judgment" as to both the due process claim, *id.* at 16a, and the takings claim, *id.* at 14a.

On the merits, the court of appeal explained that both "claims are substantively deficient." Pet. App. 14a (takings); *see id.* at 17a (due process). The takings claim failed because the Hashims did not allege "that they sought return of their property from the Controller or that the Controller denied their requests." *Id.* at 14a. Their complaint thus failed to establish "that the government took a property interest" from them, as opposed to holding their property "'in trust for them.'" *Id.* (quoting *Taylor v. Westly*, 402 F.3d 924, 936 (9th Cir. 2005)).

As to the due process claim, the Hashims had "concede[d]" that the UPL is "facially constitutional" in its treatment of "properties valued at $50 or more." Pet. App. 17a (emphasis omitted). The court of appeal observed that the Hashims had "suggested that they were pursuing an as-applied constitutional challenge" regarding property valued at less than $50, but they failed to "point to any allegations in their complaint" claiming that they had been deprived of any such property. *Id.* at 18a. And they did not "allege that they sought return of their property from the Controller, or that the Controller denied their claims." *Id.*

2. Cooper Johnson is the petitioner in No. 23-255. He filed his original and operative complaint in state trial court in May 2020. Resp. App. 23a, 46a. Johnson alleges that he "resides in California" and "believes that he is entitled to amounts held by the Controller in sums less than $50.00." *Id.* at 24a. He further alleges that he "was unsuccessful in seeking return of his property pursuant to the post-deprivation procedures." *Id.* at 31a. Like the Hashims, he sought to represent a class of individuals whose property is in the custody of the Controller, and advanced due process and takings claims under the federal and state

constitutions. *Id.* at 39a-46a. Shortly after filing his complaint, Johnson moved for a temporary restraining order and preliminary injunction. 23-255 Pet. App. 4a.

The same trial court that had previously dismissed the Hashims' complaint denied Johnson's motion and dismissed his complaint. 23-255 Pet. App. 5a. It noted that Johnson's counsel also represented the Hashims, and observed that Johnson's complaint was "substantially identical" to the complaint in *Hashim*. *Id.* In the trial court's view, Johnson's suit was "a transparent effort to evade" the trial court's prior rulings denying relief in *Hashim*. *Id.*

The court of appeal affirmed in an unpublished opinion. It reasoned that the trial court properly exercised its "inherent authority to dismiss the complaint because it was duplicative of *Hashim*." 23-255 Pet. App. 5a-6a. In his appellate briefing, Johnson had "fail[ed] to address the basis for the trial court's dismissal order," *id.* at 6a, and had not "offered any authority or citations to the record to suggest the trial court erred," *id.* at 7a. The court of appeal concluded that "Johnson's failure to offer any legal argument, citation to authorities, or citation to the record waives his appeal challenging the judgment." *Id.* (citing *Ellenberger v. Espinosa*, 30 Cal. App. 4th 943, 948 (1994), and Cal. R. Ct. 8.204(a)(1)(B)-(C)).

ARGUMENT

Petitioners offer no persuasive reason for this Court to grant review. As an initial matter, there are jurisdictional barriers to this Court's review: petitioners fail to establish Article III standing, and the decisions below rest on adequate and independent state law grounds. In any event, there is no merit to petitioners' claims that California's Unclaimed Property

Law (UPL) facially violates due process or the Takings Clause. The UPL requires that multiple forms of pre-escheatment notice be sent to owners of all property valued at $50 or more and certain kinds of property with lesser value, and the Controller maintains a well-publicized website where all owners may search for and reclaim property in their name. Nor do the decisions below conflict with any precedent of this Court or with the other cases petitioners cite.

1. This Court lacks jurisdiction to review the court of appeal's judgments for two distinct reasons.

a. Petitioners' factual allegations do not establish Article III standing. They have not alleged any "concrete and particularized injury"—much less one that is "fairly traceable to the challenged conduct." *Carney v. Adams*, 141 S. Ct. 493, 498 (2020). While the state courts below had no occasion to address whether petitioners alleged facts sufficient to satisfy Article III, petitioners bear the burden of demonstrating their standing in this Court. *See Pennell v. City of San Jose*, 485 U.S. 1, 8 (1988). They have failed to do so.

The Hashims merely allege that they "believe" that the Controller is holding their property valued at less than $50, Resp. App. 2a, and that the Controller "may be holding" certain unspecified funds apparently linked to an alleged insurance policy, *id.* at 13a. Similarly, Johnson alleges that he "believes that he is entitled to amounts held by the Controller in sums less than $50.00." *Id.* at 24a. But "speculation" of this kind "does not suffice" to establish standing. *Summers v. Earth Island Inst.*, 555 U.S. 488, 499 (2009).[5]

[5] A search of the Controller's website, *see supra* p. 4 & n.2, reveals

Nor do the Hashims' allegations regarding their business activities establish standing. They assert that they "have been prevented from notifying owners of their existing property if the property's value fails to exceed $50." Resp. App. 13a. But they do not identify any specific client whom they allegedly have been unable to assist in recovering property. And this Court has rejected the theory of "probabilistic standing" premised on the likelihood that one of a plaintiff's many members or associates has suffered injury. *Summers*, 555 U.S. at 499. Even if it is "possible—perhaps even likely" that one of the Hashims' clients has unclaimed property and has been unable to recover it, the Hashims still must "identify" one or more individuals "who have suffered the requisite harm." *Id.* Their complaint does not do that.

b. This Court also lacks jurisdiction to review the decisions below because both of the court of appeal's judgments "rest[] on a state law ground that is independent of the federal question and adequate to support the judgment." *Coleman v. Thompson*, 501 U.S. 722, 729 (1991). The "independent and adequate state ground doctrine" "applies whether the state law ground is substantive or procedural." *Id.* And "[i]n the context of direct review of a state court judgment," the doctrine "is jurisdictional." *Id.*

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a number of items of unclaimed property, including several valued at less than $50, owned by individuals with the name Aaron and Paul Hashim. Many of these items are associated with addresses in Bakersfield, California, where the Hashims allege their business is based, *see* Resp. App. 2a. But the Hashims' complaint does not contain allegations about any of these items. (And their presence on the Controller's website underscores how straightforward it can be for owners to identify and reclaim their property—including property valued at less than $50. *See infra* pp. 15-16.)

The court of appeal held that the Hashims' appellate brief failed to "cite to the operative pleading or set forth its allegations," Pet. App. 13a, which required affirmance of the trial court's judgment, *id.* at 16a (emphasis added). The court cited *Rakestraw v. California Physicians' Service*, 81 Cal. App. 4th 39 (2000), which holds that on appeal from a trial court order sustaining a demurrer, the plaintiff "bears the burden of demonstrating that the trial court erroneously sustained the demurrer" and therefore "must show the complaint alleges facts sufficient to establish every element of each cause of action." *Id.* at 43; *see* Pet. App. 13a-14a, 16a. This is a "firmly established and regularly followed" rule of California appellate procedure. *Walker v. Martin*, 562 U.S. 307, 316 (2011).[6]

The Hashims contend that "[a]lthough the Court of Appeal chided" them for "not 'citing to the operative pleading or setting forth its allegations in their briefing,'" the court "proceeded to consider the merits of both the takings and due process claims." Pet. 33. But the court below did not just "chide" the Hashims for their failure to follow California appellate procedure—it held that "this failing alone mandates affirmance" of the trial court's judgment. Pet. App. 16a; *see id.* at 14a. The fact that the constitutional claims were discussed by the court of appeal, *see* Pet. 34, does not respond to that independent state law holding, which is adequate to sustain the judgment.

In Johnson's case, the court of appeal likewise affirmed the trial court's dismissal of the complaint on

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[6] *See, e.g.*, *Williams v. Sacramento River Cats Baseball Club, LLC*, 40 Cal. App. 5th 280, 286 (2019); *Sui v. Price*, 196 Cal. App. 4th 933, 938 (2011); *Consumer Cause, Inc. v. Arkopharma, Inc.*, 106 Cal. App. 4th 824, 827 (2003).

an adequate and independent state law ground. Indeed, that was the *only* ground on which the court relied; it did not reach or address any federal law issues. *See* 23-255 Pet. App. 5a-7a. It explained that Johnson had not "offered any authority or citations to the record to suggest the trial court erred in concluding that this action constituted an impermissible attempt to circumvent its rulings in *Hashim*"; thus, "Johnson's failure to offer any legal argument, citation to authorities, or citation to the record waives his appeal challenging the judgment." *Id.* at 7a. The court cited *Ellenberger v. Espinosa*, 30 Cal. App. 4th 943, 948 (1994) and Rule 8.204(a)(1)(B)-(C) of the California Rules of Court, both of which generally require appellants to support their arguments with citations to relevant legal authorities and the record. Once again, that is a "firmly established and regularly followed" rule of California appellate procedure. *Walker*, 562 U.S. at 316.[7]

2. Even setting aside those jurisdictional barriers, petitioners fail to establish that their underlying claims warrant review by this Court. They principally contend that California's Unclaimed Property Law violates due process on its face because it fails to require individualized pre-escheatment notice to owners of property valued at less than $50. Pet. 22-23; *see id.* at 19-30. That argument lacks merit, and petitioners do not identify any genuine conflict with this Court's precedents or with any of the lower-court authorities they cite.

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[7] *See, e.g.*, *Orozco v. WPV San Jose, LLC*, 36 Cal. App. 5th 375, 390 n.5 (2019); *Mangano v. Verity, Inc.*, 179 Cal. App. 4th 217, 222 n.6 (2009); *Harding v. Harding*, 99 Cal. App. 4th 626, 635 (2002).

a. As this Court has emphasized, there is no "formula" for determining what due process requires in any "particular proceeding," which must be analyzed "under all the circumstances" of the relevant factual context. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *accord Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). The question of whether a particular "deprivation of property" violates due process is generally evaluated under the *Mathews* framework. *Nelson v. Colorado*, 581 U.S. 128, 135 (2017). That framework considers "the private interest affected," "the risk of an erroneous deprivation of that interest through the procedures used," and "the Government's interest, including the administrative burden that additional procedural requirements would impose." *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53 (1993).

Those considerations do not support petitioners' argument here that the UPL violates due process. The private interest affected is relatively modest, as petitioners' challenge is limited to property valued at less than $50. *See* Pet. 22; Pet. App. 17a. While individualized notice and a hearing are generally required before an individual "is deprived of any *significant* property interest," *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (emphasis added), it is doubtful whether property valued at less than $50 meets that threshold as a categorical matter. The risk of an erroneous deprivation is relatively low, because the UPL only applies to property that has been unused or dormant for an extended period of time, and escheated property can subsequently be located and claimed via the Controller's website. *Supra* p. 4. And requiring individualized notice for all property

valued at less than $50 would impose a significant administrative burden and cost, disproportionate to the value of the property at stake. *Supra* p. 2.

Moreover, in the escheatment context, this Court has repeatedly held that non-individualized forms of notice—such as notice by publication—comport with due process. *See Standard Oil Co. v. New Jersey*, 341 U.S. 428, 434-435 (1951); *Anderson Nat'l Bank v. Luckett*, 321 U.S. 233, 243-245 (1944); *Security Sav. Bank v. California*, 263 U.S. 282, 288-290 (1923). Petitioners fail to grapple with (or even cite) the due process analysis in these escheatment cases. In *Security Savings Bank*, for example, the petitioner argued that notice by publication was constitutionally inadequate "until it has been shown by affidavit that personal service is impossible or impractical." 263 U.S. at 288. The Court disagreed. *See id.* at 288-289.

b. Petitioners do not cite or apply the governing constitutional standard described in *Mathews*. They instead contend that the decisions below conflict with other precedents of this Court, most notably *Mullane* and *Jones v. Flowers*, 547 U.S. 220 (2006). *See* Pet. 20-25. But none of the cases cited by petitioners conflicts with the decisions below or suggests that the UPL violates due process.

Mullane involved a judicial proceeding for the "settlement of accounts by the trustee of a common trust fund." 339 U.S. at 307. *Jones* addressed whether the government must take additional steps to notify a property owner "when notice of a tax sale" of real property with unpaid taxes "is mailed to the owner and returned undelivered." 547 U.S. at 223. While the Court held that notice by publication was insufficient on the facts of those cases, both cases disclaim any effort to

establish a bright-line rule regarding what type of notice is required in other factual settings. *See Mullane*, 339 U.S. at 314; *Jones*, 547 U.S. at 226, 229.[8]

Neither *Mullane* nor *Jones* involved escheatment, let alone the temporary, custodial transfer to the State of low-value items of property. The judicial proceeding in *Mullane* had the potential to permanently deprive trust beneficiaries of substantial sums of money. *See* 339 U.S. at 309, 313.[9] And the tax sale in *Jones* would have permanently deprived the owner of a parcel with "a fair market value of $80,000." 547 U.S. at 224. Here, all owners of property worth more than $50 receive multiple forms of individualized, pre-escheatment notice, and petitioners do not challenge that aspect of the statute. Only for property worth less than $50 is individualized, pre-escheatment notice not

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[8] The other cases petitioners cite in passing, *see* Pet. 23-25, also bear little resemblance to this one. *See James Daniel Good Real Prop.*, 510 U.S. at 46 (civil forfeiture of real property belonging to a person convicted of drug offenses); *Fuentes v. Shevin*, 407 U.S. 67, 69-71 (1972) (state statutes "authorizing the summary seizure of goods or chattels in a person's possession under a writ of replevin"); *Connecticut v. Doehr*, 501 U.S. 1, 4-5 (1991) (state statute authorizing "prejudgment attachment of real estate . . . in conjunction with a civil action for assault and battery"); *N. Ga. Finishing v. Di-Chem, Inc.*, 419 U.S. 601, 601-603 (prejudgment wage garnishment); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 792 (1983) ("whether notice by publication and posting provides a mortgagee of real property with adequate notice of a proceeding to sell the mortgaged property for nonpayment of taxes").

[9] The "common trust fund" at issue in *Mullane* encompassed "113 trusts . . . the gross capital of which was nearly three million dollars," 339 U.S. at 309—an average of more than $26,000 per trust.

required, reflecting a legitimate legislative concern about the disproportionate cost and administrative burden of providing individualized notice in those instances. *Supra* p. 2.

Nor did any of the cited cases involve a situation where the State actively tries to reunite owners with their property. As discussed above, the Controller maintains a website where individuals may search for their unclaimed property and file a claim for it. Holders are required to transmit to the Controller available information that identifies the owner for all property worth $25 or more—and holders are urged to transmit this information even for property worth less than $25. *Supra* p. 3 & n.1; *see* Cal. Code Civ. Proc. § 1530(b)(5).[10] In the modern world, a searchable website is among the most effective means of reuniting owners with unclaimed property. Petitioners contend that individuals have "no reason" to know to look at the Controller's website in the first place. Pet. 25. But the site is the top Google result for the search query "California unclaimed property."[11] It is at least as prominent as the newspaper advertisements and courthouse postings that the Court has held satisfy

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[10] Petitioners assert that "property worth less than $50 is typically aggregated rather than individually listed." Pet. 26. That is not correct. Only property worth less than $25 may be reported to the Controller in aggregate; even as to that property, the Controller "strongly discourage[s]" holders from reporting in the aggregate. *Supra* p. 3 & n.1. Holders frequently comply with that recommendation, as evidenced by the many items of unclaimed property worth less than $25 in the Controller's online database.

[11] Google search, "California unclaimed property," https://tinyurl.com/yc2rebmh.

the due process notice requirement in the escheatment context.[12]

Petitioners also contend (Pet. 19) that review is warranted "to revisit the constitutional concerns raised" by Justices Alito and Thomas when they concurred in the denial of certiorari in *Taylor v. Yee*, 136 S. Ct. 929 (2016). That concurrence noted that the combination of "shortened escheat periods with minimal notification procedures[] raises important due process concerns." *Id.* at 930. For example, "blanket newspaper notification" is "unlikely to be effective." *Id.* But nothing in the concurrence suggests that there is a constitutional problem with the combination of methods California has chosen—two individualized, pre-escheatment mailings for all property valued at $50 or more, in addition to a searchable website for all unclaimed property with owner-identifying information. And just as *Taylor* was a "poor vehicle for reviewing" the due process issues raised in that case, *id.*, the same is true here, *see supra* pp. 8-11.

c. Petitioners next assert that the decisions below conflict with "decisions by the federal Courts of Appeals." Pet. 27; *see id.* at 27-30. That is not correct.

Petitioners first point to *Garcia-Rubiera v. Fortuno*, 665 F.3d 261 (1st Cir. 2011). Pet. 27. But that case involved Puerto Rico's process for obtaining reimbursement for state-mandated automobile insurance, not a statute governing the escheatment of unclaimed property. 665 F.3d at 263. And while the UPL requires individualized, mailed notice for all property

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[12] Petitioners also complain that the website is "often-broken." Pet. 25. The Controller disagrees, but in any event, that allegation is absent from petitioners' complaints and is not relevant to their claim that the UPL is unconstitutional on its face.

worth $50 or more, the Puerto Rico law provided for *no* mailed or individualized notice for refunds of *any* amount. *Id.* at 263-264. Puerto Rico's procedures were not available online or in any publication, only by going in person to a specific government office and making an "'appropriate request' for a copy." *Id.* at 264. That contrasts sharply with the facts here, where California widely publicizes its unclaimed-property procedures and the Controller maintains a website allowing individuals to search for and claim their property. *Supra* p. 4.

The other circuit cases petitioners cite (Pet. 28) are also inapposite. In *Sterling Hotels, LLC v. McKay*, 71 F.4th 463 (6th Cir. 2023), the Sixth Circuit considered a state elevator inspector's order to shut down a hotel's elevators without notice. *Id.* at 467. That action prevented the hotel from renting rooms on five of its six floors, *id.* at 466—causing financial loss that was presumably unrecoverable and far exceeded California's $50 threshold for mailed notice under the UPL. And *Resnick v. KrunchCash, LLC*, 34 F.4th 1028 (11th Cir. 2022), likewise did not involve escheatment of unclaimed property. Nor did the Eleventh Circuit even reach the merits of any due process issue. It held only that the plaintiff's claim regarding alleged wage garnishment without proper notice was not "so utterly frivolous that it robbed the court of federal question jurisdiction." *Id.* at 1031.

Finally, petitioners argue that this Court's "[r]eview is especially warranted because the Ninth Circuit has taken a different view of the UPL's constitutionality" than the state court of appeal here. Pet. 28; *see id.* at 28-30. But the Ninth Circuit decisions they cite involved a prior version of the UPL that generally did not provide for any individualized, mailed

pre-escheatment notice. *See Taylor v. Westly*, 488 F.3d 1197, 1201 (9th Cir. 2007) (per curiam). In response to those rulings, the Legislature amended the UPL to address the court's concerns. *See supra* pp. 1-4. The Ninth Circuit has since held that the revised statute comports with due process on its face. *Taylor v. Westly*, 525 F.3d 1288, 1289 (9th Cir. 2008); *Taylor v. Yee*, 780 F.3d 928, 937 (9th Cir. 2015); *see* Pet. 30 n.11.

3. Petitioners' takings claim is equally meritless, and as to that claim petitioners do not even attempt to allege any conflict.

Petitioners assert that the UPL "effectuates a taking under this Court's decision" in *Horne v. Department of Agriculture*, 576 U.S. 350 (2015). Pet. 30. *Horne* involved a federal statute that required raisin growers to "give a certain percentage of their crop"—sometimes nearly half of it—"to the Government, free of charge." 576 U.S. at 355. That resulted in "a clear physical taking" because "[a]ctual raisins," as well as "[t]itle to the raisins," was "transferred from the growers to the Government," which "dispose[d] of [the] raisins as it wishe[d]." *Id.* at 361.

This case is not remotely analogous. While formal title to unclaimed property temporarily vests in the State, *see* Pet. 31, the Controller is *not* allowed to keep the property permanently or dispose of it as she wishes. The Controller instead must "safeguard and conserve the interests" of property owners, Cal. Code Civ. Proc. § 1365; must work to "reunite[]" "property owners . . . with their property," *id.* § 1501.5(c); and must respond when owners file a claim for the return of their property, *id.* § 1540; *see id.* § 1501.5(a) (unclaimed property "shall not permanently escheat to the state"). That is a far cry from the situation in *Horne*, where growers could not reclaim their raisins,

and were entitled only to "an interest in any net proceeds from sales" of the raisins turned over to the government (which sometimes amounted to nothing at all). 576 U.S. at 355.

As the court below observed, moreover, the petitioners here "do not allege that they sought return of their property from the Controller or that the Controller denied their requests." Pet. App. 14a. A takings plaintiff typically seeks either "just compensation" as "measured by 'the market value of the property at the time of the taking,'" *Horne*, 576 U.S. at 368-369, or a court judgment "ordering the government to give [the owner] back his property," *Knick v. Township of Scott*, 139 S. Ct. 2162, 2176 (2019). But owners of unclaimed property in California may obtain that relief simply by filing a claim with the Controller. None of this Court's precedents suggests that such a system violates the Takings Clause.

The court of appeal also correctly relied on *Texaco, Inc. v. Short*, 454 U.S. 516, 530 (1982), which held that a State's escheatment of unclaimed property generally is not a taking. Pet. App. 14a-15a. Petitioners argue that *Texaco*'s holding extends only to "mineral rights." Pet. 32. But the Court's analysis was not limited to that context: "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." *Texaco*, 454 U.S. at 530; *see Turnacliff v. Westly*, 546 F.3d 1113, 1119-1120 (9th Cir. 2008) (relying on *Texaco* to reject Takings Clause challenges to the UPL); *Suever v. Connell*, 579 F.3d 1047, 1057 (9th Cir. 2009) (same).

Petitioners contend that filing a claim with the Controller may be inadequate to recover an owner's property in certain circumstances—for example, because "the contents of safe deposit boxes are held for varying periods of time and then auctioned off," or because "[s]tock accounts are held for 18 months and then liquidated." Pet. 31-32. But petitioners do not allege that they own property of that kind that has escheated. *See supra* pp. 4-7. And in any event, all owners of safe deposit boxes are mailed pre-escheatment notices, with no minimum value threshold. *See* Cal. Code Civ. Proc. § 1514. Like their due process claim, petitioners' takings claim does not warrant further review—particularly not in a case where jurisdictional problems would prevent the Court from reaching the merits of the claims, *see supra* pp. 8-11.

CONCLUSION

The petitions for writs of certiorari should be denied.

Respectfully submitted,

ROB BONTA
Attorney General of California
MICHAEL J. MONGAN
Solicitor General
THOMAS S. PATTERSON
Senior Assistant Attorney General
JOSHUA PATASHNIK
Deputy Solicitor General
ANYA M. BINSACCA
Supervising Deputy Attorney General
JAY C. RUSSELL
Deputy Attorney General

November 1, 2023

APPENDIX

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APPENDIX A

AARON HASHIM, an individual, and PAUL HASHIM, an individual, PLAINTIFFS, vs. JOHN CHIANG, in his official capacity as CONTROLLER OF THE STATE OF CALIFORNIA; and DOES 1 through 500, inclusive, DEFENDANT.	Case No.: CGC 13 531294 THIRD AMENDED CLASS ACTION COMPLAINT FOR: (1.) DECLARATORY RELIEF; (2.) VIOLATION OF 42 U.S.C. § 1983 (Procedural Due Process Fourteenth Amendment Violations); DEMAND FOR JURY TRIAL

1. Plaintiffs Aaron Hashim and Paul Hashim (collectively, "Plaintiffs"), by their undersigned counsel, as and for their Class Action Complaint ("Complaint") against John Chiang, in his official capacity as the Controller for the State of California ("Controller") and as private custodian of the Unclaimed Property Fund, and Does 1 through 500, inclusive (collectively, "Defendant"), allege as follows:

JURISDICTION AND VENUE

2. This Court has personal and subject matter jurisdiction over all causes of action asserted herein.

3. Venue is proper in San Francisco County under Code of Civil Procedure 395(a) based on the facts, without limitation, that Defendant reside in and is custodian for the Unclaimed Property Fund and maintain an office in this county, and the acts and omissions upon which this action is based, occurred, in part, in this county.

PARTIES

4. Plaintiffs Aaron Hashim and Paul Hashim are two individuals who reside in California. They operate U.S. Claims Services, Inc., a California corporation with its principal place of business in Bakersfield, California. Plaintiffs believe that they are entitled both as individuals and through their corporation to amounts held by the Controller in sums less than $50.00 and other property discussed herein. Plaintiffs are also California taxpayers and are engaged in the business of reuniting owners with their lost and unclaimed property for a fee. Plaintiffs bring this action in their capacity as taxpayers pursuant to code of Civil Procedure section 526(a).

5. Defendant John Chiang is the Controller for the State of California and the custodian of the Unclaimed Property Fund. As custodian of an approximate $6.9 billion fund, comprised of an estimated 24.9 million accounts, Defendant Chiang is responsible for protecting these private funds and property known as the Unclaimed Property Fund on behalf of the true owners, who are private citizens that reside in California, the United States, and worldwide.

Defendant Chiang is responsible for safeguarding the budget for the State of California and for properly enforcing the Unclaimed Property Law, California Code of Civil Procedure sections 1300, et seq. ("UPL").

6. The true names or capacities, whether individual, corporate, associate, or otherwise, of Defendant DOES 1 through 500, inclusive, are unknown to Plaintiffs, who therefore sue said defendant by such fictitious names. Plaintiffs are informed and believe and thereon allege that each of the defendant sued herein as a DOE is legally responsible in some manner for the events and happenings referred to in this Complaint. Plaintiffs will seek leave of the Court to amend this Complaint to insert their true names and capacities in place of the fictitious names when Plaintiffs learn of their true names and capacities.

7. At all relevant times, defendants, and each of them, were the agents, independent contractors and/or employees of each of the remaining defendants, and were at all times acting within the purpose and scope of said contract, agency or employment, and each defendant has ratified and approved the acts of his agent.

GENERAL ALLEGATIONS

8. This is an action brought pursuant to 42 U.S.C. § 1983, for declaratory relief and preliminary and permanent injunctive relief, an accounting and common fund, among other claims, based on the unconstitutional conduct of Defendant in his official capacity under color of state law. This Complaint alleges that the Controller knowingly violated the United States Constitution by continuing actions after being told repeatedly by multiple judges that such

actions were illegal and ultra vires of state laws and the Constitution.

9. The principal and fundamental purpose of California's Unclaimed Property Law, California Code of Civil Procedure sections 1300, et seq. ("UPL") is to protect the true owners of unclaimed property by reuniting them with their lost or unclaimed property.

10. As its second purpose, the UPL was enacted to prevent businesses and financial institutions, such as banks and insurance companies, known under the terminology of the UPL as the "holders" of unclaimed property, from misappropriating the true owners' money and other unclaimed property, and to allow the State, rather than the holders, to benefit from the use of the unclaimed property until the true owner steps forward to claim his or her property.

11. To accomplish these two purposes, the UPL designates State actors, namely, the State Controller's Office and Defendant John Chiang, in his capacity as the State Controller, to serve as the custodian of unclaimed property. The UPL authorizes Defendant to acquire unclaimed property, and requires Defendant Chiang to provide constitutional notice to the property owner before his or her property rights are disturbed, and to hold the property until the property's rightful owner claims the property.

12. If the owners of unclaimed property are unknown, the UPL requires Defendant to locate them and to restore their property to them. There is no exception to this rule, which is the primary purpose of the UPL. Plaintiffs allege that the Controller fails to follow the primary purpose of the UPL as alleged herein and in paragraph 24(a.)-(f.), Infra. Only if the

unclaimed property owners cannot be located, does the unclaimed property remain in the custody of the State.

A. The Controller Knowingly Refuses to Provide Constitutional Notice and Due Process In the Form Of Direct Mail And Publication Notice, and Intentionally Mails Letters To State Addresses Without Consulting Readily Available Government Data Bases.

13. The UPL is not a permanent or "true" escheat statute. In other words, the State has custody of the unclaimed property only until such time as the true owner steps forward to claim it. Thus, the State has a duty to notify the owners, and to correctly document, locate, and identify the unclaimed property owners in order to fulfill the principle objection of the UPL—reuniting unclaimed property with its rightful owners. The primary manner by which the Controller reunites the owners with their property is through direct mail and publication notice to the owners, and by verifying the correct address of the owners through the State databases. However, the Controller knowingly refuses to consult readily available government data bases and mails only a single letter to knowingly stale address. When confronted with multiple addresses for the owner, the Controller mails just a single letter, to one address, which the Controller arbitrarily selects.

14. The Controller also maintains an online internet search portal or website with the owners' identity and a description of the property listed and found at http://www.sco.ca.gov/upd.html and http://scoweb.sco.ca.gov/UCP/. The Controller's website allows the owner to search a database using various search criteria, such as a first name and a last name, to search through over 27.9 million accounts

containing over $7.1 Billion in property held in the Controller's custody in the Unclaimed Property Fund. The website becomes inoperable when the owner's name and property is excluded from the database, as further described below.

B. The Controller Knowingly Maintains No Records For Certain Types of Property (Like Cashier's Checks, Life Insurance Benefits, And Amounts Under $50) Which Makes It Impossible For The Owner To Ever Reclaim His or Her Property In Knowing Violation of State Laws and the Constitution.

15. The UPL, specifically the Code of Civil Procedure section 1530, requires holders of unclaimed property to submit explicit identifying information to Defendant based on the type of unclaimed property in their possession. For instance, Section 1530(b)(1) mandates holders to report " … 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 … [the UPL]. This particular subsection exempts traveler's checks and money orders, life insurance benefits, and provides absolutely no Constitutional notice to these owners, including failing to list their names and property descriptions on the Controller's website. In some instances, the Controller aggregates these items with no ownership information into a single, unsearchable account.

16. Section 1530(b)(2) requires holders "of escheated funds of life insurance corporations [to report] the full name of the insured or annuitant, and his or her last known address, . . . [Insert added]." The Controller, likewise, fails to provide Constitutional

Notice and Due Process to the beneficiaries of life insurance benefits, and fails to properly list their ownership information on this website. Instead, the Controller aggregates these amounts which are over $50.00 into a single account with no ownership information.

17. Section 1530(b)(3) requires holders to report "a description of the property and the place where it is held and may be inspected by the Controller" for "safe deposit box[es] or other safekeeping repository[ies] or in the case of other tangible property, . . . [Insert added]." The Controller fails to provide Constitutional Notice to these owners and then arbitrarily destroys the safe deposit box property after a subjective period of time that does not comply with the UPL.

18. Section 1530(b)(4) mandates holders of unclaimed property to report "[t]he 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 fifty dollars ($50) each may be reported in aggregate." However, the Controller is required to follow the United States Constitution, which requires Notice and Due Process before the Controller takes property for use by the government in any amount. Further, Section 1530(b)(6) allows, "Other information which the Controller prescribes by rule as necessary for the administration of this chapter. The Controller is statutorily mandated to take whatever steps are necessary to maintain the constitutionality of the program,

19. Section 1530(b)(5) mandates holder to report "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." This particular subsection exempts reporting dates for "any property reported in the aggregate."

20. In practice, however, the Controller has misused these seemingly benign set of laws to misappropriate property without any Constitutional notice and due process from people and businesses. Specifically, Defendant. As custodian of the Unclaimed Property Fund, seizes unclaimed property from private companies and financial institutions, yet arbitrarily fails to request or procure any information relating to the identity of owners for property valued under $50.00, though the information is readily available to the holder. Defendant broadly refers to this as the "Under $50 Rule," though the aggregation of property includes property valued at greater than $50.00, composed of various types of property held in different amounts.

21. It is the Controller's obligation to safeguard unclaimed private property in the Unclaimed Property Fund until the true owner steps forward. However, it has been Defendant's customary practice to request no information whatsoever about the identity of the true owners of property with a value under $50, even though the names, addresses, and other identifying information attached to the accounts are readily available. Under the UPL, it is the Controller's duty to reunite the true owner with his property and it is impossible for him to do so without the owners' name and identity. This is in clear violation of the UPL, because the UPL does not authorize the Controller to disregard all of the property owners' identifying information by

employing the "Under $50 Rule." There is no threshold property amount or exemption from the due process clause of the United States Constitution for amounts under $50, cashier's checks, money orders, life insurance benefits, etc.

22. Pursuant to the "Under $50 Rule," Defendant arbitrarily and capriciously deprives true owners of the principal objective of the UPL, which is to restore or reunite the unclaimed property to the true owners. Thus, Defendant wrongfully seizes owners' unclaimed personal property and provides no opportunity for true owners to ever reclaim their property because they request for none of their identifying information. This is tantamount to conversion.

23. Defendant's failure to procure any identifying information contravenes the United States and California Constitutions, California statutes, and the proper interpretation and the spirit of the UPL. Defendant's illegal statutory interpretation of the UPL leads to an "absurd result" because it deprives true owners of their constitutional due process rights through the permanent seizure of private property under the guise of the "Under $50 Rule," and through Defendant's failure to enforce the criteria for "escheat," which results in property that is permanently seized as if it were "unclaimed property." The property is then destroyed, sold, and taken without constitutional Mullane-style notice to the rightful owner, which requires "notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Thus, Defendant's practices clearly

violate unclaimed property owners' statutory and constitutional due process rights.

C. The Controller Knowingly Refused and Failed To Promulgate Legal Regulations Concerning (1) The Processing of Claims Filed By An Owner With The Controller For Unclaimed Property; (2) The Auditing of "Holders" or Companies or Financial Institutions (Like Banks and Insurance Companies) For Unclaimed Property As Required By the California Administrative Procedures Act ("APA"), Government Code sections 11340, et seq. (Deerings 2014).

24. By arbitrarily deciding not to catalogue, collect, and post the claimant's readily available names to the State website, and by aggregating amount into meaningless names, such as "State Farm policyholders," the Controller wrongfully insures that it will be extraordinarily more difficult, if not impossible for claimants to ever recover their unclaimed property. Plaintiffs specifically allege:

(a.) The Controller violates the due process clause of the Constitution by failing to provide Mullane-style notice;

(b.) The Controller makes it impossible for the true owner to claim his or her property from the State because there is no name or identification attached to the property in vary amounts over and under $50.00.

(c.) The Controller never promulgated regulations to guide the claim process for citizens, which are required by a claimant and owner of property to prove up or "perfect" a UPL claim pursuant to the

Administrative Procedures Act ("APA"), Government Code sections 11340, et seq. (Deerings 2014). Instead, the Controller issues verbal instructions to all owners, including owners of amounts under $50, owners of cashier's checks, money orders, and life insurance benefits, so that every owner is treated in an arbitrary and capricious case-by-case basis. Since the Controller knowingly fails to maintain a legal claim process pursuant to the APA and the UPL, fails to maintain proper ownership information on all property, and fails to list the property and ownership information, the owners cannot locate and recover their property, which is permanently taken for use by the State in violation of the UPL, and the United States and California Constitutions. The taxpayer Plaintiffs allege that failing to promulgate lawful regulations pursuant to the APA and then dealing with the public through verbal instructions constitutes enormous waste of public funds, particularly when considering that the Controller is administering 24.9 million accounts that contain $6.9 Billion.

(d.) The Controller illegally fails to comply with Code of Civil section 1530(b)(2), which states: "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 records." Instead, the Controller allows life insurance corporations to aggregate the their amount without complying with Section 1530(b)(2).

(e.) The Controller fails to comply with Code of Civil section 1530(b)(6) which allows: "Other

information which the Controller prescribes by rule as necessary for the administration of this chapter." As alleged by the Plaintiffs herein, the primary purpose of the UPL is to return property to its rightful owner, which knowingly cannot be accomplished under the Unclaimed Property Program that the Controller currently has in place.

(f.) The Controller fails to comply with the United States and California Constitutions and Code of Civil Procedure section 1531 because he fails to provide any notice to owners of property within vast categories of property that he takes from financial institutions, life insurance companies, and other businesses know as "holders" within the parlance of the UPL that includes, but is not limited to: life insurance benefits owed to beneficiaries of life insurance policies; money orders; cashier's checks; amounts aggregated under $50 and other sums in excess of $50 owed to a particular owner of property. As a result, absolutely no Constitutional notice or due process is provided to these property owners pursuant to Section 1531. These owners can never recover their property because there is no listing of the property within these categories maintained by the Controller either internally or on his website. The Controller has failed to promulgate lawful regulations pursuant to the UPL and the APA, so that the owners cannot claim their property even if they conclude that the Controller may be holding their property. This conduct results in a permanent taking of property by the California Controller in violation of the United States and California Constitutions.

25. As a result, the Controller effectuates a permanent taking of private property that violates both the Fifth Amendment by taking the owner's private property for public use without just compensation, and the Fourteenth Amendment by failing to provide adequate notice, as well as violating Plaintiffs and Class Members due process rights by denying them an opportunity to object before being permanently divested of their property. When state officials, such as Defendant, seize property violating federally protected rights created by acts of Congress these state officials also violate the Supremacy Clause, U.S. Constitution, Article VI, Cl. 2, and the Contracts Clause, U.S. Constitution, Article I, Cl. 1, of the United States Constitution. State officials are also interfering with federally protected, statutory stock rights, such as those found in the Securities Act of 1933, 15 U.S.C. §§ 77a-77bbb ("1993 Act") and Securities and Exchange Act of 1934, 15 U.S.C. §§ 78a-78hh ("1934 Act"), because stock is a contract between a corporation and its investor.

26. As a direct result of Defendant's violation of taxpayers' constitutional due process rights, Plaintiffs have been unable to conduct their business in a lawful manner and have been prevented from notifying owners of their existing property if the property's value fails to exceed $50. Plaintiffs believe they are untitled to property that is being held in custody of the Controller; for example, Paul Hashim is a State Farm insurance policy holder and believes that the Controller may be holding some of his money in one of the aggregated accounts.

27. As discussed in greater detail below, Defendant's actions in adopting and enforcing the

"Under $50 Rule" and the other acts described herein (see ¶ 24(a.)-(f.), supra, fall completely outside governing statutes and constitute an action that violates the express provisions of the UPL, the "due process" clauses found in the California Constitution, Article I, §§ 7, 15, and the Fifth and Fourteenth Amendments to the United States Constitution, the latter of which states that "no state shall deprive any person of life, liberty, or property without due process of law.

CLASS ACTION ALLEGATIONS

28. This action is brought on behalf of the named Plaintiffs identified above and all similarly situated citizens initially defined as:

> All citizens who seek the return of their private property from the Controller and whose property was taken by the Controller on behalf of the State of California in violation of the United States Constitution and the APA pursuant to the "Under $50 Rule" and the other violations noted herein and who were not given proper due process and notice of the escheated property and who are unable to claim their property from the Controller because their property escheated based on the value under $50 and the Controller does not identify the name of the property owner in his records.

29. **Numerosity.** The proposed class consists of too many unclaimed property holders to join in a single action

30. **Commonality.** Plaintiffs and Class members' claims raise predominantly common factual and legal questions that can be answered for all unclaimed property holders who were deprived of due process through a single class-wide proceeding. To resolve each Class-Member's claims, the same questions and answers for each Class Member will predominate.

31. **Typicality.** Plaintiffs' claims are typical of class members' claims because each arises from Defendant' deprivation of Plaintiffs' Constitutional rights under the procedural due process and notice requirements.

32. **Adequacy.** Plaintiffs will fairly and adequately protect the interests of the class. Their interests do not conflict with class members' interests and they have retained counsel experienced in unclaimed property litigation against the Controller to vigorously prosecute this action on behalf of the class.

33. **Superiority.** Under the facts and circumstances set forth above, class action proceedings are superior to any other methods available for both fair and efficient adjudication of the rights of each member of the class, because joinder of individual members of the class is not practical and, if the same were practical, said Class Members could not individually afford the litigation, such that individual litigation would be inappropriately burdensome, not only to said citizens, but also in the courts of the nation.

34. Common questions of law and fact predominate over any questions affecting only individual property holders and a class action is superior to individual litigation. The recovered

property and damages available to individual plaintiffs pursuant to the "Under $50 Rule" are insufficient to make litigation addressing Defendant' practices economically feasible in the absence of the class action procedure.

35. Processing individual claims would increase the expenses and cause delay not only to Class Members, but also to Defendant and the Court.

36. A class action of this matter will avoid case management difficulties and provide multiple benefits to the litigation parties, including efficiency, economy of scale, unitary adjudication with consistent results and equal protection of the rights of each Class Member, all by the way of the comprehensive and efficient supervision of the litigation by a single court.

37. Notice of the pendency of the action and of any result or resolution of the litigation can be provided to Class Members by the usual forms of publication or such other methods of practice as deemed appropriate by the Court.

38. Without class certification, the prosecution of separate actions by individual members of the class described above would create a risk of:

a. Inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for Defendant; or

b. Adjudications with respect to the individual members of the class that would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication,

or would substantially impair or impede their ability to protect their interest.

39. In the alternative, class certification is appropriate because Defendant have acted or refused to act on grounds generally applicable to the class, thereby making final injunctive relief appropriate with respect to the property holders of the class as a whole.

FIRST CAUSE OF ACTION

(Declaratory Relief)

40. Plaintiffs repeat and reallege the allegations set forth in paragraph 1 through 39 as though fully set forth herein. A real and actual controversy exists between Plaintiffs and Defendant in his official capacity concerning Defendant's constitutional duties to legally enforce the various statutes and laws that guide his office. Specifically, Plaintiffs seek a declaration that Defendant: Failed to comply with the UPL through their unconstitutional enforcement of the "Under $50 Rule" and the other acts complained of herein, including those alleged at Paragraph 23(a)-(f), supra, that violate taxpayers' constitutional due process rights by arbitrarily seizing their unclaimed property without requesting any identifying information from the holder, so that it may never be returned to the property owner.

41. The dispute between Plaintiffs and Defendant is actual and concrete, and involves a significant financial burden unilaterally imposed upon Plaintiffs based on Defendant's actions. A determination of the rights and duties of the parties is necessary and proper at this time in order that Plaintiffs may ascertain their rights, and establish as a matter of law

that Defendant has violated his obligations and duties under the above laws such that Plaintiffs are entitled to the disgorgement and return of the balance of their property.

SECOND CAUSE OF ACTION

(Violation of 42 U.S.C. § 1983)

(Procedural Due Process Clauses of the 5th and 14th Amendments)

42. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 41 as though fully set forth herein.

43. The Due Process Clause of the California and the United States Constitutions prohibit the Defendant from depriving citizens of protected property interests without due process of law.

44. Plaintiffs, as well as the owners of existing property, have a constitutionally protected property interest in the private property that they own and that is seized by the State under the processes described herein. The Defendant is charged with the responsibility of acting as "custodian" for the "true owners" of the property held in the Unclaimed Property Fund.

45. Defendant deprived Plaintiffs and property owners of their constitutionally protected property interests by seizing their property without providing notice and due process and by arbitrarily taking property from private companies and financial institutions without requesting for the rightful owner's name, even when it was readily available, when the property is worth less than $50 and in the manner described in paragraph 24(a.)-(f.), supra.

46. Based upon the foregoing, Plaintiffs are entitled to and hereby seek just compensation commensurate with the harm they have suffered as a result of Defendant's violations of rights to Due Process guaranteed by California and the United States Constitutions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants and each of them, as follows:

1. For equitable and injunctive relief as determined by this Court, including but not limited to, imposition of a constructive trust over and accounting of any and all transactions unlawfully entered into by Defendant without the appropriate notification of the public;

2. A permanent injunction that (1) restrains Defendant from engaging in future unlawful and/or improper transactions, as alleged in this Complaint; (2) requires Defendant to promulgate public rule-making, pursuant to the APA, to enforce the UPL and to properly notify and to list the names of the property owners on the Controller's government records and data base; (3) to halt the Defendant's waste of government funds; and (4) to recover the funds unlawfully withheld from taxpayers by properly providing Constitutional notice while publicly listing the owner names and documentation of their property so that the owners may claim it as alleged herein;

3. Restitution and disgorgement of ill-gotten private property that was taken in violation of the United States Constitution, the UPL, and the APA gains to the public and/or claimants in the form of an order requiring Defendant to return Plaintiffs and

Class Members' property held in custody by Defendant in violation of the UPL, and the State and Federal Constitution;

4. For an accounting of the total amount of the Plaintiffs and Class Members improperly seized property, the proper list of the identities and the calculation of principal and interest, and the unnecessary fees, costs, and taxes;

5. For creation of a common fund consisting of all property received from the improper acquisition of property and funds without notice and due process that must necessarily be refunded by Defendant to Plaintiffs and other affected property owners, together with proper interest, savings of future costs, fees, and taxes which will not have to be paid;

6. For a reasonable sum of attorneys' fees pursuant to California Code of Civil Procedure sections 526a, 1021.5, and other laws, as incurred by Plaintiffs to date and to be incurred by Plaintiffs hereinafter in connection with this action;

7. For all costs incurred by Plaintiffs to date and to be incurred by Plaintiffs hereafter in connection with this action; and

8. For such other and further relief as the Court deems just and proper.

Dated this 15th day of December 2014, at Sacramento, California.

The Palmer Law Group

By */s/*William W. Palmer, Esq.

William W. Palmer, Esq.

Attorney for Plaintiffs and Class Members.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

The Palmer Law Group

By */s/*William W. Palmer, Esq.

William W. Palmer, Esq.

Attorney for Plaintiffs and Class Members.

APPENDIX B

COOPER D. JOHNSON, an individual, Plaintiff, vs. BETTY T. YEE, in her official capacity as CONTROLLER OF THE STATE OF CALIFORNIA, and DOES 1 through 500, inclusive, Defendants.	Case No. CGC-20-584592 CLASS ACTION COMPLAINT FOR: (1.) DECLARATORY RELIEF; (2.) VIOLATION OF 42 U.S.C. § 1983 (Procedural Due Process Fourteenth Amendment Violations); (3.) VIOLATION OF 42 U.S.C. § 1983 (U.S. Const., Fifth Amendment – Takings Clause) DEMAND FOR JURY TRIAL

Plaintiff Cooper D. Johnson, individually and as a taxpayer pursuant to Code of Civil Procedure 526(a) ("Plaintiff"), by his undersigned counsel, as and for his Class Action Complaint ("Complaint") against Betty T. Yee, in her official capacity as the Controller for the State of California ("Controller" or "Defendant") and as private custodian of the Unclaimed Property Fund, and Does 1 through 500, inclusive (collectively, "Defendants"), alleges as follows:

JURISDICTION AND VENUE

1. This Court has personal and subject matter jurisdiction over all causes of action asserted herein.

2. Venue is proper in San Francisco County under Code of Civil Procedure section 395(a) based on the facts, without limitation, that Defendant is custodian for the Unclaimed Property Fund and maintains an office in this county, and the acts and omissions upon which this action is based, occurred, in part, in this county.

PARTIES

3. Plaintiff Cooper D. Johnson is an individual who resides in California. Plaintiff believes that he is entitled to amounts held by the Controller in sums less than $50.00 and other property discussed herein. Plaintiff brings this action in his capacity as an individual and as a taxpayer pursuant to Code of Civil Procedure section 526(a).

4. Defendant Betty T. Yee is the Controller for the State of California and the custodian of the Unclaimed Property Fund. As custodian of an approximate $9.3 billion fund, comprised of an estimated 43 million accounts, Defendant Yee is responsible for protecting these private funds and property known as the Unclaimed Property Fund on behalf of the true owners, who are private citizens that reside in California, the United States, and worldwide. Defendant Yee is responsible for safeguarding the budget for the State of California and for properly enforcing the Unclaimed Property Law, California Code of Civil Procedure sections 1300, *et seq*. (hereafter, "Unclaimed Property Law" or "UPL").

5. The true names or capacities, whether individual, corporate, associate, or otherwise, of Defendant DOES 1 through 500, inclusive, are unknown to Plaintiff, who therefore sue said Defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the Defendants sued herein as a DOE is legally responsible in some manner for the events and happenings referred to in this Complaint. Plaintiff will seek leave of this Court to amend this Complaint to insert their true names and capacities in place of the fictitious names when Plaintiff learns of their true names and capacities.

6. At all relevant times, said Defendants, and each of them, were the agents, independent contractors and/or employees of each of the remaining Defendants, and were at all times acting within the purpose and scope of said contract, agency or employment, and each defendant has ratified and approved the acts of his agent.

INTRODUCTION

7. This proposed class action challenges the constitutionality, as applied, of California's Unclaimed Property Law ("UPL"), which requires that banking organizations and other entities holding so-called "abandoned" property transfer it to the California Controller's Office. Such property includes bank savings accounts, uncashed payroll checks, unredeemed customer or vendor credits, unused gift cards or gift certificates, shares of stock and bond accounts, among many other forms of property.

8. Currently, the Controller holds over $9.3 billion in "unclaimed" property. This property is owned by such purportedly "unknown" athletes and personalities and citizens like Kobe Bryant (Property ID Nos. 962594045 and 017241610), the Speaker of the United States House of Representatives Nancy Pelosi (Property ID Nos. 015048011, 012390561, and 968473966), the former Governor of the State of California, Arnold Schwarzenegger (Property ID No. 964627703), Queen of England (Elizabeth Windsor), Vladimir Putin (Property ID No. 986208586), Presidents George W. Bush (Property ID No. 956318038) and Barack Obama (Property ID No. 969500727), and one member of the California Supreme Court.

9. The unconstitutional conduct described herein conflicts with the "dual objectives" of the Unclaimed Property Law, California Code of Civil Procedure sections 1300, *et seq.* ("UPL") to be administered by Defendant which 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 v I-Flow* (2009) 46 Cal. 4th 1323, 1328 *("Azure")* (quoting *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal. 2d 462, 463).) The UPL is not intended as a "revenue stream" for the State but is private property to be held in trust and returned to the owner. Thus, the irreparable harm is suffered by the very property owners the Controller is charged to protect under the primary purpose of the statutory scheme, described by the California Supreme Court in *Azure, supra,* 46 Cal. 4th 1323.

10. Moreover, California uses a short, *three-year* "dormancy" period to determine whether a bank account may be deemed dormant and hence "abandoned." *(See* Cal. Civ. Proc. Code § 1513(a)(1)(A).) Thus, if an account is inactive for three years - for example, if a customer uses a savings account as a "rainy day" fund and makes no deposits or withdrawals for three years - the account can be listed as "abandoned." When the UPL was enacted in 1959, the dormancy period was fifteen years. In 1976, it was reduced to seven (7) years; in 1988 to five (5) years, and in 1990 to three (3) years.[1]

11. After property is transferred, the Controller continues to deny owners any individualized notice, even after they have been deprived of their property. The Controller for the State of California routinely

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[1] A later amendment extended the dormancy period back to five years only for "any other written instrument on which a banking or financial organization is directly liable," such as a certified check. Stats. 1990, c. 1069 (S.B. 1186), § 1.

seizes private property from foreign citizens, who have no contract with the foreign state and whose addresses are listed in foreign countries in the Controller's records. Instead of direct mail or publication notice, the Controller operates a "searchable" Internet website that property owners may visit, if they are aware of it.[2] The searchable website is broken and unsearchable. More important, the Controller's searchable website only contains identifying information on the private property after it is seized and in most instances sold for use by the State government, such as in the case of stock or other tangible property like contents of safe deposit boxes. In theory, claimants may submit claim forms seeking the return of certain types of property online or otherwise by mail.

12. It is difficult or impossible for owners to reclaim their property because: (a) the unsearchable public website hides the identifying information from the owner; (b) there is no legal claim process; and (c) the Defendant fails to verify owner information with the other California State databases (such as the Department of Motor Vehicles or voter registration lists). This is especially true if the property is listed with last name first or if the name is misspelled or abbreviated or if a nickname is used (such as "Bill" for "William" or "Dave" for "David), or if the property is listed by the name of the institution holding it, rather than the individual owner. Further, the Controller may reject claims if, for example, it deems

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[2] Controller's Website can be found at: http://www.sco.ca.gov/upd.html and http://scoweb.sco.ca.gov/UCP/

documentation inadequate based on the unpublished or verbal claim process.

13. Moreover, with no notice of any kind, many individuals are simply unaware that their property has been transferred to the Controller or are unaware of the procedure for seeking its return. Accordingly, property owners are highly unlikely to avail themselves of this procedure and, in fact, only a small portion of seized property is ever returned. In addition, owners of unclaimed property are not entitled to receive interest. Plaintiff is entitled to recover their own private property (as opposed to damages) with interest and other substantive due process rights under the 5th and 14th Amendments. The law requires just compensation and interest at California's *alternative borrowing rate,* which is the amount of interest the State avoids when it uses the illegally seized property instead of funds borrowed on the open market. *See Webbs Fabulous Pharms. v. Beckwith,* 449 U.S. 155, 162 (1980) (finding government liable for interest actually accrued, or if seized funds were placed in Treasury account, the constructively earned interest at the government's alternative borrowing rate from the time seized until its return). The California Supreme Court further held in *Holt* v. *Kelly* (1978) 20 Cal.3d 560, 562 and in *Minsky v. City of Los Angeles* (1974) 11 Cal. 3d 113, 121, that: "A claim for the specific recovery of property has never been considered a claim for money or damages."

14. In 2016, two Justices of the U.S. Supreme Court - Justice Alito expressed constitutional concern about state abandoned property laws, joined by Justice Thomas in a separate opinion concurring in

the denial of certiorari in a case presenting the question whether "California law provides property owners with constitutionally sufficient notice before escheating their financial assets." (*Taylor v. Yee,* 136 S. Ct. 929, 929 (2016).) These Justices explained that "[t]he Due Process Clause requires States to give adequate notice before seizing private property. When a State is required to give notice, it must do so thorough processes 'reasonably calculated' to reach the interested party—here, the property owner." (*Id.*)

15. Justices Alito and Thomas explained that because the seizure of private property is no small thing, notification procedures may not be empty rituals: "[P]rocess which is a mere gesture is not due process.' Whether the means and methods employed by a State to notify owners of a pending escheat meet the constitutional floor is an important question." (*Id.* (citations omitted).) The Justices noted that, "[i]n recent years, States have shortened the periods during which property must lie dormant before being labeled abandoned and subject to seizure." (*Id.* at 930.) "This trend—combining shortened escheat periods with minimal notification procedures—raises important due process concerns. As advances in technology make it easier and easier to identify and locate property owners, many States appear to be doing less and less to meet their constitutional obligation to provide adequate notice before escheating private property. Cash-strapped States undoubtedly have a real interest in taking advantage of truly abandoned property to shore up state budgets. But they also have an obligation to return property when its owner can be located. To do that, States must employ notification procedures designed to provide the pre-escheat notice the Constitution requires." (*Id.*) The Justices

concluded that "the constitutionality of current state escheat laws is a question that may merit review in a future case." (*Id.*)

16. California is generally considered to have one of the most aggressive abandoned property statutes in the nation. The Council on State Taxation ("COST") graded all 50 states based on the aggressiveness of their abandoned property laws. California, along with Maine and New Jersey, received the COST's lowest grade: a "D."[3]

17. The Plaintiff in this case received no notice before his property was seized by the State and transferred to the Controller. Plaintiff subsequently was unsuccessful in seeking return of his property pursuant to the post-deprivation procedures.

18. The loss of his property in violation of Plaintiff and Class Members' constitutional rights has caused irreparable harm to Plaintiff.

(a) Taking custody of any property (i) over which she does not have jurisdiction, such as private property belonging to citizens who reside in foreign countries; or (ii) property that is not "abandoned" or "unclaimed" and does not meet the statutory requirements of the UPL that is delivered without full satisfaction of all requirements for escheatment pursuant to the UPL. *See* C.C.P. §§ 1300 (definitions); 1510 through 1521 (specific requirements for escheat of property); 1513.5 (actual notice required by Holder); 1520 (Holder's notice obligations); 1530 (affidavit required of

[3] https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-studies-articles- reports/cost-scorecard--the-best-and-worst-of-state-unclaimed-property-laws-october-2013.pdf.

Holder); 1531 (notice required by Controller). In *Azure, supra,* 46 Cal. 4th at 1336 the California Supreme Court explained to the Controller that: "Requiring compliance with the UPL- i.e., ensuring that the owners are in fact unknown and the property is in fact unclaimed—furthers the purpose of protecting unknown owners. Moreover, the state has no legitimate interest in receiving and using property that is not unclaimed." *See also Bank of America v. Cory,* (1985) 164 Cal. App. 3d 66, 74 ("When considered in total context, the statutory scheme of the UPL compels the Controller to affirmatively take *all* steps necessary to carry out the purposes of the UPL.").

(b) The 43 million property owners, including Plaintiff, cannot claim their private property from the custody of the Controller because the Controller does not maintain and list the property owners' names on her "searchable website," i.e. the website, https://www.seo.ca.gov/upd_lawregs.html, is broken. The Controller publicly maintains that she has no obligation to fix it and to properly maintain ownership information, such as properly spelled names and correct addresses of the 43 million citizens, who have no way to reclaim their property from the Controller's custody. (See Television interview of Controller Betty Yee. *(See* ABC7 News, "Do you have money hiding in plain sight? How to find out" (April 23, 2019) found:

https://abc7news.com/education/money-hiding-in-plain-

sight/5267081/?fbclid=IwAR2juAjXvWOyyVSYihsSkMnExTL71B0KLArOO6CFrfiyyL8R6kqHfbA96hA

(c) There is no legal claim process in place for the 43 million citizens to reclaim their private property and no *legal* process in place to guide the audits of companies for unclaimed property. Instead, the process is verbal or contained in 300+ pages of forms, notices, bulletins, memos, and "guidelines" that are not published but maintained solely on the Controller's government website at https://www.sco.ca.gov/upd_lawregs.html. The Controller is required by law to promulgate lawful regulations to guide: (1) the claim process used by citizens to recover their private property from the Controller's custody; and (2) the Controller's private auditors and the audits conducted on private businesses and companies, like life insurance and property casualty insurance companies, banking institutions, etc., for unclaimed property. *See Tidewater Marine Western v. Bradshaw* (1996) 14 Cal 4th 557, 568-577, wherein the California Supreme Court held that an Agency's actions are "void" for failure to adopt written regulations pursuant to public rulemaking under the Administrative Procedures Act ("APA"), Government Code sections 11340, et seq. (Deerings 2020).

(d) The Controller does not provide Constitutional Notice and Due Process to property owners prior to seizing the private property which is sold, destroyed, and monetized for use by the California state government. By the time the property is listed on the Controller's website it is, in virtually every instance, already gone, i.e. the property owner's stock is sold and destroyed. *See Taylor* v. *Betty T. Yee,* 136 S. Ct. 929 (2016), *Jones* v. *Flowers,* 547 U.S. 220 (2006) (citing *Mullane* v.

Hanover Bank & Trust Co., 339 U.S. 306 (1950), *Taylor* v. *Westly,* 402 F.3d 924 (9th Cir. 2005), reh'g and reh'g en banc den. (May 13, 2005) (Describing California's "new approach" to escheat); *Suever* v. *Connell,* 439 F. 3d 1142 (9th Cir. 2006) (Same); *Taylor* v. *Westly,* 488 F.3d 1197 (9th Cir. 2007) (Directing the District Court to enter a preliminary injunction enjoining Defendants from accepting property under color of the UPL until Controller satisfies Due Process Clause.); *Taylor* v. *Westly,* 525 F.3d 1288 (9th Cir. May 12, 2008) (Awarding interim fees).)

(e) Requiring the Controller pay interest for use of private funds that are taken for use by the State when (and if) it is returned to the owner. *(See Webbs Fabulous Pharms. v. Beckwith,* 449 U.S. at 162, *supra.)*

19. Accordingly, in this proposed class action Plaintiff seeks declaratory and injunctive relief against Defendant Betty T. Yee, Controller of the State of California, to remedy the constitutional defects in application of the UPL identified in the above paragraph 18(a)- (e).

STATUTORY BACKGROUND

20. California's UPL departs from the historic function of abandoned property laws. Traditionally, abandoned property or "escheat" statutory schemes applied to real property and tangible personal property belonging to persons who died intestate or disappeared, where there was no descendent, relative, or other valid claimant to the estate. In these situations, the property truly was abandoned and ownerless (bona vacantia).

21. The UPL is very different. Instead of being limited to property owned by persons who have died intestate or disappeared, the statute applies to *any* property meeting the technical definition of "abandonment." Rather than protecting the rights of the "true owners," the statute reflects a new form of escheatment that views unclaimed property as a revenue generator for the state government.

22. It was not until the mid-Twentieth Century that states such as California began to expand unclaimed property laws to include certain types of intangible property including, in particular, unclaimed bank deposits. State governments soon realized that unclaimed intangible property, after it was remitted to the states, was often never claimed by the owner and, thus, could represent a significant source of revenue.

23. Starting in the late 1990's and early 2000's, the states began to dramatically increase their enforcement efforts. This surge in audit activity was in large part due to the proliferation of the use of private contract audit firms that are compensated by the states on a contingent-fee basis -- typically, 10 to 15 percent of the amount of any unclaimed property that is identified in the audit. Such a fee structure provides a profit incentive to such firms to take aggressive positions in these audits. Further, these contingent-fee audit fans are often staffed by former accountants and consultants with far greater expertise in unclaimed property matters than their client states, which led many states to defer almost entirely to the positions taken by these firms in audits. (*See Taylor v. Westly,* 402 F.3d 924 (9th Cir. 2005),

reh'g and reh'g en banc den. (May 13, 2005) (Describing California's "new approach" to escheat).)

24. Unclaimed property audits are replete with examples of the contract audit firms essentially dictating policy to states, which lack the knowledge or expertise to know when these audit firms are overreaching. The use of contingent fee audits (which of course creates financial incentives for larger assessments) is unconstitutional and also inconsistent with the primary purpose of unclaimed property laws, which is to return property that is indisputably owed to another person. There is no statutory or constitutional authority that allows a property seizure company to be paid a percentage or commission on the private property that is taken, sold, and destroyed, without constitutional notice to the property owners. There is likewise no statutory language to authorize such a private auditor program. The money is paid "off balance sheet" to the auditors, which means that the California Legislature is unaware of the payments.

25. In short, California's UPL, along with unclaimed property laws in other states, has been trending in the wrong direction for over thirty years, because such laws have been greatly expanded in unconstitutional ways for the purpose of generating revenue for states, at the expense of both owners and putative holders of unclaimed property.

26. The UPL does not use the traditional understanding of "abandonment" – i.e., the knowing and voluntary relinquishment or renunciation of property rights. Instead, property is deemed to be "abandoned" under the UPL according to dormancy thresholds specified in the statute. As a general rule, property is deemed "abandoned" if it is dormant for

three years with no activity by the owner. (*See* Statutory Notes, 2007 Main Volume, Cal.Civ.Proc.Code § 1513; see also Stats. 1976, c. 648, § 1 & c. 1214 § l; Stats. 1988, c. 286 § 2; Stats. 1990, c. 450 (S.B. 57), § 4.) When the UPL was enacted in 1959, the dormancy period was fifteen years. In 1976, it was reduced to seven (7) years; in 1988 to five (5) years, and in 1990 to three (3) years.

27. The UPL uses a three-year rule to determine whether a bank account is dormant, even though a typical person does not "forget" about his or her bank account after a mere three years. Rather, such accounts are often left untouched for extended periods of time *(e.g.,* "rainy- day" accounts). The shortening of the dormancy period in 1990 was driven more by state revenue concerns than by any correlation with the actual time that owners are likely to have forgotten about their property.

28. In another escheat case, Judge Richard Posner of the Seventh Circuit Court of Appeals described a three-year dormancy period for determining abandonment as "a period so short as to present a serious question whether it is consistent with the requirement in the Fourteenth Amendment that property not be taken without due process of law, implying adequate notice and opportunity to contest." *(Cerajeski v. Zoeller,* 735 F.3d 577, 582 (7th Cir. 2013).)

29. In *Taylor v. Westly,* 488 F.3d 1197 (9th Cir. 2007), the Ninth Circuit Court of Appeals held that an injunction should be issued against California's Unclaimed Property law for similar violations of the U.S. Constitution.

30. As part of the State's relentless campaign to fill its coffers with "abandoned" property, the UPL contains strong penalties coercing holders of property, including banks and other entities, to report as much "abandoned" property as possible to the Controller. Such entities are required, subject to severe penalties, to submit "holder reports" annually to the Controller listing all "abandoned" property they hold. Such reports must include details on the property as well as a remittance to the Controller of the escheated property.

31. "Abandoned" property is transferred to the Controller, which acts as custodian of the property. Holders of property (such as banks and utilities) may transfer cash via electronic funds transfers for amounts less than $20,000. (Code Civ. Proc. § 1532; Cal. Code. Reg. § 1155.150)

32. Property that is not claimed by its owners is escheated to the State and spent by the California State government.

33. The State's voracious appetite for unclaimed property is reflected in its retention, as of fiscal year ("FY") 2018, of $9.3 billion in unclaimed funds. (*See* California State Controller's Press Release dated March 13, 2019 found at: https://www.sco.ca.gov/eo_pressrel 19941.html; *see also* Taylor, Mac, "Unclaimed Property: Rethinking the State's Lost & Found Program, Legislative Analyst's Office (LAO)" (February 10, 2015) at pp. 16-17 [4] noting that the seizure of "unclaimed" private

[4] Taylor, Mac, "Unclaimed Property: Rethinking the State's Lost & Found Program, Legislative Analyst's Office (LAO) " (February

property has now become the 5th largest source of revenue for the State of California.)

34. Banking organizations holding purportedly "abandoned" property which is less than $50 in value are not required to provide any notice at all to rightful owners before transferring it to the Controller.[5]

35. Telephone calls or verbal contact with an owner does not prevent property from being deemed abandoned. Nor does internal activity such as service charges, crediting of interest and dividends, automatic dividend reinvestment, and automatic withdrawals. (Code Civ. Proc.§ 1513)

CLASS ACTION ALLEGATIONS

36. This is a class action pursuant to Code of Civil Procedure section 382 brought by Plaintiff on his own behalf and on behalf of all those similarly situated with respect to the operation and administration of the UPL. The proposed Class consists of all individuals owning purportedly "abandoned" property, or whose private property was seized by the Controller without notice or due process for use by the California state government. This include foreign citizens and those property owners with less than $50 held by a banking and investment organization in California that was transferred to the Controller in

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10, 2015) at pp. 16-17 found at: http://www.lao.ca.gov/reports/2015/finance/Unclaimed-Property/unclaimed-property- 021015.pdf.

[5] Call Kurtis Investigates: *State Can Keep Your Unclaimed Money Under Bill Meant To Close Loophole.* http://sacramento.cbslocal.com/2013/06/06/call-kurtis-investigates-state-can-keep-your-unclaimed-money-under-bill-meant-to-close-loophole/#.UbJVXKCsoJE.email

the past 20-years without notice to the account holder, and who have not had their money returned to them.

37. Although the exact number, identity, and location of persons in the proposed Class is readily discernible based on the Defendant's own records, based on information and belief, the number of members in the proposed Class will be in excess of 1,000 persons. Those persons in the Class are therefore so numerous that joinder of the entire proposed Class in impractical.

38. There are questions of law and fact common to all members of the proposed Class, including whether Defendant complied with the constitutional requirements for the deprivation and taking of property.

39. Plaintiff's claims are typical of those of the members of the proposed Class, who are subject to the same deprivations of their property and rights. There is a well-defined community of interest in the questions of law and fact involved in this case.

40. Plaintiff can adequately represent the interests of the members of the proposed Class. They have no interests relevant to the lawsuit's subject matter antagonistic to the Class members. Their attorneys have experience in litigation, including class actions, involving issues identical or similar to those raised in this action.

41. Because Defendant's duties to comply with the Constitution apply equally to each person in the proposed Class, the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications which would

establish incompatible standards of conduct for Defendant.

42. Defendant's actions and threatened actions are depriving and will deprive Plaintiff and the members of the proposed Class of their constitutional rights on grounds generally applicable to all, thereby making appropriate declaratory, injunctive, and equitable relief and § 1983 claims with regard to the proposed Class as a whole.

43. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

FIRST CAUSE OF ACTION

(Declaratory Relief)

44. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 43 as though fully set forth herein. A real and actual controversy exists between Plaintiff and Defendant in his official capacity concerning Defendant's constitutional duties to legally enforce the various statutes and laws that guide his office. Specifically, Plaintiff seeks a declaration that Defendant: Failed to comply with the UPL through their unconstitutional enforcement of the "Under $50 Rule" and the other acts complained of herein at paragraph 18(a)-(e), that violate the citizen taxpayers' constitutional due process rights by arbitrarily seizing their unclaimed property without requesting any identifying information from the holder, so that it may never be returned to the property owner.

45. The dispute between Plaintiff and Defendant is actual and concrete, and involves a significant financial burden unilaterally imposed upon Plaintiff

based on Defendant's actions. A determination of the rights and duties of the parties is necessary and proper at this time in order that Plaintiff may ascertain their rights, and establish as a matter of law that Defendant has violated his obligations and duties under the above laws such that Plaintiff is entitled to the disgorgement and return of the balance their property.

SECOND CAUSE OF ACTION

(U.S. Const., Fourteenth Amendment, Section 1 – Due Process Clause; 42 U.S.C. § 1983)

46. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 45 as though fully set forth herein.

47. The Fourteenth Amendment, Section 1, of the United States Constitution provides, in part, "nor shall any State deprive any person of life, liberty, or property, without due process of law ...." A claim for violation of this federal right may be brought under 42 U.S.C. § 1983.

48. The Controller, under the color of law as provided by the UPL, has violated (and continues to violate) Plaintiffs right to due process through his enforcement and administration of the UPL, by depriving them of their property without due process.

49. Plaintiff, as well as the owners of existing property, has a constitutionally protected property interest in the private property that they own and that is seized by the State under the processes described herein. Defendant deprived Plaintiff and property owners of their constitutionally protected property interests by seizing their property without providing

notice and due process and by arbitrarily taking property from private companies and financial institutions without requesting the rightful owner's name, even when it is readily available, when the property is worth less than $50.

50. Unless the Controller is restrained and enjoined from continuing to enforce and administer the UPL in manner that violates Plaintiffs constitutional rights, she will continue to do so far into the foreseeable future.

51. Plaintiff and Class Members have no plain, speedy, adequate remedy at law; therefore, injunctive relief from this Court is the only means available to them to protect the rights guaranteed Plaintiff and the members of the Class by the Fourteenth Amendment's due process clause.

THIRD CAUSE OF ACTION

(U.S. Const., Fifth Amendment – Takings Clause; 42 U.S.C. § 1983)

52. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 51 as though fully set forth herein.

53. The Fifth Amendment to the United States Constitution provides, in part, that "[n]o person shall . . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." The Just Compensation requirement is a self-executing constitutional command. It is also enforceable via an action pursuant to 42 U.S.C. § 1983.

54. The Controller, under the color of law as provided by the UPL, has violated (and continues to

violate) each Plaintiffs right under the Fifth Amendment through her enforcement and administration of the UPL, by taking each Plaintiffs property without just compensation.

55. The Controller's above-described unlawful takings of private property substantially impaired Plaintiffs access, use, and enjoyment of said property for no valid public use or public purpose.

56. Unless the Controller is restrained and enjoined from continuing to enforce and administer the UPL in a manner that violates Plaintiffs constitutional rights, she will continue to do so far into the foreseeable future.

57. Plaintiff and Class Members have no plain, speedy, adequate remedy at law; therefore, injunctive relief from this Court is the only means available to them to protect the rights guaranteed Plaintiff and the members of the Class by the Fifth Amendment's Takings · Clause.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. For equitable and injunctive relief as determined by this Court, including but not limited to, imposition of a constructive trust over and an accounting of any and all transactions unlawfully entered into by Defendant without the appropriate notification of the public.

2. A permanent injunction that (1) restrains Defendant from engaging in future unlawful and/or improper transactions, as alleged in this Complaint; (2) requires Defendant to promulgate public rule-

making, pursuant to the APA, to enforce the UPL and to properly notify and to list the names of the property owners on the Controller's government records and data base; (3) to halt the Defendant's waste of government funds; and (4) to recover the funds unlawfully withheld from the taxpayers by properly providing Constitutional notice while publicly listing the owner names and a documentation of their property so that the owners may claim it as alleged herein.

3. Restitution and disgorgement of ill-gotten private property that was taken in violation of the United States Constitution, the UPL, and the APA to the public and/or claimants in the form of an order requiring Defendant to return Plaintiff and Class Members' property held in custody by Defendant in violation of the UPL, and the State and Federal Constitutions.

4. For an accounting of the total amount of the Plaintiff and Class Members improperly seized property, the proper list of the identities and the calculation of principal and interest, and the unnecessary fees, costs, and taxes.

5. For creation of a common fund consisting of all property received from the improper acquisition of property and funds without notice and due process that must necessarily be refunded by Defendant to Plaintiff and other affected property owners, together with proper interest, savings of future costs, fees, and taxes which will not have to be paid.

6. For a reasonable sum of attorneys' fees pursuant to California Code of Civil Procedure sections 526a, 1021.5, and other laws, as incurred by

Plaintiff to date and to be incurred by Plaintiff hereinafter in connection with this action.

7. For all costs incurred by Plaintiff to date and to be incurred by Plaintiff hereafter in connection with this action; and

8. For such other and further relief as the Court deems just and proper.

DATED: May 22, 2020

Respectfully submitted,
PALMER LAW GROUP, a PLC

By */s/*William W. Palmer
William W. Palmer

– and –

MASSEY & GAIL, LLP

Jonathan S. Massey
Pro Hac Vice Counsel (Pending)

Attorneys for plaintiff Cooper D. Johnson and Class Members

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

DATED: May 22, 2020

Respectfully submitted,
PALMER LAW GROUP, a PLC

By */s/*William W. Palmer
William W. Palmer

Attorneys for plaintiff Cooper D. Johnson and Class Members