No. 14-

IN THE

Supreme Court of the United States

CHRIS LUSBY TAYLOR, ET AL.,

Petitioners,

v.

BETTY YEE, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS STATE CONTROLLER OF THE STATE OF CALIFORNIA, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Ninth Circuit's judgment in this case should be GVR'ed in light of *Horne v. Department of Agriculture*, No. 14-275, 135 S. Ct. 2419 (June 22, 2015).

2. Whether the California Unclaimed Property Law, Cal.Civ.Proc.Code §§ 1300, *et seq.*, violates the Due Process Clause of the Fourteenth Amendment because it deprives owners of their property without affording constitutionally adequate notice.

PARTIES TO THE PROCEEDING

Petitioners (Plaintiffs-Appellants below) are Chris Lusby Taylor, Nancy A. Pepple-Gonsalves, Susan Swinton, William J. Palmer, deceased, Don H. Perri, and Jennifer Walsh, on behalf of themselves and other persons similarly situated. Mark Macauley and Mary A. Steele were Plaintiffs-Appellants below.

Respondents (Defendants-Appellees below) are Betty Yee, individually and in her official capacity as State Controller of the State of California, and Richard Chivaro.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF AUTHORITIES vi

PETITION FOR WRIT OF CERTIORARI 1

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS INVOLVED 1

STATUTORY PROVISIONS INVOLVED 2

STATEMENT 2

A. Statutory Background 5

B. Procedural History 12

C. The Decision Below 19

REASONS FOR GRANTING THE WRIT 21

I. The Ninth Circuit's Judgment Should Be GVR'ed In Light Of *Horne v. Department Of Agriculture*, No. 14-275. 22

II. Certiorari Is Warranted To Review The Constitutionality Of The California UPL Scheme Under The Due Process Clause.....27

A. The Ninth Circuit's Judgment Conflicts With This Court's Decisions Establishing The Notice Requirements of Due Process.....27

B. The Ninth Circuit's Judgment Is Inconsistent With Decisions By Other Courts of Appeals.....35

CONCLUSION.....40

Appendix A

Opinion dated March 11, 2015 of the United States Court of Appeals, Ninth Circuit – Chris Taylor, et al. v. Betty Yee, et al. 1a

Appendix B

Order dated November 14, 2012 of the United States District Court, Eastern District of California – Chris Taylor, et al. v. John Chiang, et al. 26a

Appendix C

Order dated May 7, 2015 of the United States Court of Appeals, Ninth Circuit – Chris Taylor, et al. v. Betty Yee, et al. 35a

Appendix D

Relevant Provisions of California Unclaimed Property Law, Cal.Civ.Proc.Code §§ 1301, *et seq.* 36a

Appendix E

Sample UPL advertisement placed by state Controller, Exhibit B to Complaint in Civ. No. 2:01-cv-02407-JAM-DAD (E.D. Cal.), Dkt. 1, pp. 34-35 (filed 12/31/01) 73a

TABLE OF AUTHORITIES

CASES:

Arkansas Game & Fish Comm'n v. United States,
133 S. Ct. 511 (2012) 26

Azure Ltd. v. I-Flow Corp.,
210 P.3d 1110 (Cal. 2009) 20

Eastern Enters. v. Apfel,
524 U.S. 498 (1998) 27

Echavarria v. Pitts,
641 F.3d 92 (5th Cir. 2011) 38

Energy Reserves Group, Inc. v.
Kansas Power & Light Co.,
459 U.S. 400 (1983) 28

Fong v. Westly,
12 Cal.Rptr.3d 76 (Cal. App. 2004).....20

Garcia-Rubiera v. Fortuno,
665 F.3d 261 (1st Cir. 2011).....35, 36

Garcia-Rubiera v. Fortuno,
727 F.3d 102 (1st Cir. 2013).....36

Hall v. Borough of Roselle,
747 F.2d 838 (3d Cir. 1984).....30

Harris v. Westly,
10 Cal.Rptr.3d 343 (Cal. App. 2004).....20

Horne v. Department of Agriculture,
No. 14-275, 135 S. Ct. 2419
(June 22, 2015) ..... *passim*

Jones v. Flowers,
547 U.S. 220 (2006) ..... *passim*

Linn Farms & Timber Ltd. P'ship v.
Union Pac. R. Co.,
661 F.3d 354 (8th Cir. 2011) 39

Luessenhop v. Clinton Cnty., New York,
466 F.3d 259 (2d Cir. 2006).....36

Mennonite Bd. of Missions v. Adams,
462 U.S. 791 (1983) 34

Mullane v. Cent. Hanover Bank & Trust Co.,
339 U.S. 306 (1950) ..... *passim*

Peralta-Cabrera v. Gonzales,
501 F.3d 837 (7th Cir. 2007) 39

Perez-Alevante v. Gonzales,
197 F. App'x 191 (3d Cir. 2006) 37, 38

Plemons v. Gale,
396 F.3d 569 (4th Cir. 2005) 34, 38

Regional Rail Reorganization Act Cases,
419 U.S. 102 (1974) 26

Shipes v. Trinity Industries,
987 F.2d 311 (8th Cir. 1993) 30

Suever v. Connell,
439 F.3d 1142 (9th Cir. 2006) 30

Suever v. Westly,
579 F.3d 1047 (9th Cir. 2009) 17

Taylor v. Chiang,
No. CIV. S–01–2407 WBS GGH,
2007 WL 1628050 (E.D.Cal. June 1, 2007)....14

Taylor v. Westly,
402 F.3d 924 (9th Cir. 2005) 13, 25, 30

Taylor v. Westly,
488 F.3d 1197 (9th Cir. 2007)
(per curiam) 13, 14, 23, 30

Taylor v. Westly,
525 F.3d 1288 (9th Cir. 2008) 16

United States Trust Co. of N.Y. v. New Jersey,
431 U.S. 1 (1977) 4

United States v. $133,735.30 Seized From U.S. Bancorp Brokerage Account,
139 F.3d 729 (9th Cir.1998) 17

United States v. $277,000 of United States Currency, 69 F.3d 1491 (9th Cir. 1995).....17

United States v. Miller,
317 U.S. 369 (1943) 26

United States v. One Star Class Sloop Sailboat,
458 F.3d 16 (1st Cir. 2006).....36

United States v. Winstar Corp.,
518 U.S. 839 (1996) 4, 28

Webb's Fabulous Pharmacies, Inc. v. Beckwith,
449 U.S. 155 (1980) 17

CONSTITUTIONAL PROVISIONS:

U.S. Const. amend. 5.....1, 18
U.S. Const. amend. 14..... i, 1

STATUTES:

California Unclaimed Property Law ("UPL"),
Cal. Code Civ. Proc. §§ 1300, *et seq.*..... i, 2

Cal.Code Civ.Proc., § 1530(d) 8
Cal.Code Civ.Proc., § 1531.....10
Cal.Code Civ.Proc., § 1531(d) 8, 9
Cal.Code Civ.Proc., § 1532.....8

Stats. 1976, c. 648, § 1 & c. 1214 § 1 6
Stats. 1988, c. 286 § 2.....6
Stats. 1990, c. 1069 (S.B. 1186), § 1 6
Stats. 1990, c. 450 (S.B. 57), § 4 6

OTHER AUTHORITIES:

California State Controller's Office, *About the Unclaimed Property Program*, available at: http://www.sco.ca.gov/upd_faq_about_q01.html (last visited, Aug. 2, 2015).....23

California State Controller's Office, *Unclaimed Property Main Page*, available at http://www.sco.ca.gov/upd.html (last visited, Aug. 3, 2015) 7

CBS News, Call Kurtis Investigates: State Can Keep Your Unclaimed Money Under Bill Meant To Close Loophole (June 6, 2013): http://sacramento.cbslocal.com/2013/06/06/call-kurtis-investigates-state-can-keep-your-unclaimed-money-under-bill-meant-to-close-loophole/#.UbJVXKCsoJE.email 31

E. Leamy, ABC Good Morning America, "Not-So-Safe-Deposit Boxes: States Seize Citizens' Property to Balance Their Budgets" (May 12, 2008): http://www.youtube.com/watch?v=ZdHLIq0qHhU, http://abcnews.go.com/GMA/story?id=4832471&page=1#.Udhur5yLfCY 23

Statutory Notes, 2007 Main Volume, Cal.Civ.Proc.Code § 1513 6

PETITION FOR WRIT OF CERTIORARI

Petitioners Chris Lusby Taylor, et al., respectfully petition for a Writ of Certiorari to review the judgment of the U.S. Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the Ninth Circuit (Pet. App. 1a-25a) is reported at 780 F.3d 928. The District Court's order of November 14, 2012 (*id.* at 26a-34a) is unreported.

JURISDICTION

The Ninth Circuit issued its decision on March 11, 2015. Pet. App. 1a. The Ninth Circuit denied Petitioners' timely petition for rehearing on May 7, 2015. *Id.* at 35a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in relevant part: "[N]or shall private property be taken for public use, without just compensation."

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides, in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law."

STATUTORY PROVISIONS INVOLVED

Relevant portions of California's Unclaimed Property Law ("UPL"), Cal.Civ.Proc.Code §§ 1300, *et seq.*, are reprinted in the Appendix (Pet. App. 36a-72a).

STATEMENT

The California Unclaimed Property Law ("UPL"), Cal. Code Civ. Proc. §§ 1300, *et seq.*, is the State's law of escheat. It authorizes the State Controller to appropriate the property of purportedly "unknown" persons, to auction or otherwise sell it off, and to retain the proceeds after offering meager and unconstitutionally inadequate notice. Since the inception of this case, the unclaimed property fund has grown from 5 million accounts to 28.6 million accounts belonging to citizens residing in California, other states, and other countries. Since 2007, when the Ninth Circuit ordered a federal injunction, California has continued to seize billions of dollars' worth of private property pursuant to this statute, and the private audit companies that administer the scheme have reaped hundreds of millions of dollars in commissions and fees.

The UPL is a recipe for abuse. It interferes with the statutory scheme of other states and authorizes the seizure and appropriation of private property that is auctioned off for the State's benefit, rather than returned to its rightful owners. Under the scheme, the Controller mails "notification" letters addressed to knowingly stale addresses of property

owners, when the means to correct the address are readily available. As a result, some 28.6 million of California's 38 million total inhabitants are today listed as "unknown." The Controller holds property belonging to such "unknown" persons as the Queen of England (Elizabeth Windsor), Vladimir Putin, Presidents George W. Bush and Barack Obama, at least one member of the California Supreme Court, and two of the judges on the Ninth Circuit panel that heard this case below.

The absurdity of this situation is that the UPL requires, at its threshold, that the individual be "unknown" to the State before title to his or her property is labeled "unclaimed" and title transferred to the State. The property in question not only includes forgotten utility deposits, for example, but stock and retirement savings accounts, the irreplaceable contents of bank safe deposit boxes, and many other forms of property. In the case of items that have little or no commercial value (such as wills and trust documents, love letters, military citations for valor, and other items of sentimental importance), the irreplaceable property is shredded by state officials and permanently destroyed.

When California seeks to locate residents to force them to pay taxes that are due and owing, it is quick to resort to the Department of Motor Vehicles ("DMV") database and other readily available sources of information. Yet when it comes time to seize property under the mandatory language of UPL that requires the state officials to locate the

owners and to return their property, and to otherwise provide constitutionally required notice prior to the appropriation of property, the same property owners are "unknown" to the available databases. Inexplicably, the State is not able to find millions of its own citizens. However, these same databases are then used by the Controller to verify the identity of the owner and whether he or she may later reclaim the property under this UPL scheme.

Notably, none of the citizens in this case owed state taxes or did anything wrong that would entitle California to seize and sell their property. Rather, their private property was taken by a cash-strapped state government under an escheat system that arbitrarily labeled them "unknown," so that their property could be seized and sold as revenue for use by the State.

This Court has recognized that the government's fiscal self-interest creates a danger of self-dealing that warrants heightened judicial scrutiny. *See United States v. Winstar Corp.*, 518 U.S. 839, 896 (1996); *United States Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1, 26 (1977). A system of escheat presents obvious risks, and due process demands more safeguards, not fewer, in light of California's self-interest in profiting from the seizure of private property. Such safeguards would be consistent with the theoretical purpose of the UPL, which is to avoid forfeiture of property rights and to return property to its rightful owners. The Controller's effort to turn the UPL scheme into a money-making venture

subverts the ostensible point of the statute. And the Controller's use of private companies to administer this lucrative scheme, despite the absence of statutory authorization to do so, exacerbates the inherent risk of abuse that denies due process to property owners. Private companies, which share in the profits generated by the UPL, have an obvious conflict of interest that underscores the need for prompt and meaningful notice.

This Court's plenary review is amply warranted. At the very least, the Ninth Circuit's judgment in this case should be GVR'ed in light of *Horne v. Department of Agriculture*, No. 14-275, 135 S. Ct. 2419 (June 22, 2015).

A. Statutory Background

The first step under the UPL escheat process occurs when "holders" of property (which are "Banking organizations" "Business associations" "Financial organization" and other entities defined by Section 1501) identify property that, per the UPL, has been statutorily defined as "unclaimed" and therefore subject to confiscation by the State. Under the UPL, when there is no activity on an account or when the owner has had no contact with the holder (such as a bank) for a fixed period of time (known as the "dormancy period"), the property is statutorily defined as "abandoned" or "unclaimed," and the Controller is automatically authorized to take title to the property. 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. *See* Statutory Notes, 2007 Main Volume, Cal.Civ.Proc.Code § 1513; *see also* Stats. 1976, c. 648, § 1 & c. 1214 § 1; Stats. 1988, c. 286 § 2; Stats. 1990, c. 450 (S.B. 57), § 4.[1]

Prior to 1993, the Controller provided direct mail notice to some owners and published the names and addresses of persons with "unclaimed" property in newspapers in each county that listed an address for that individual. By 1989, the Controller had stopped sending direct mail notice and stopped publishing names in newspapers altogether, although Section 1531 continued to require this form of notice to owners. The Controller unilaterally shifted to generic single advertisements directed to no one in particular with footnotes stating that the effort was "in lieu" of compliance with the "CCP 1531." Pet. App. 73-74a.

As the Controller was decreasing the amount spent on notice, the State was simultaneously spending increasingly large sums of money on private auditors to expand the amount of property seized. The auditors are paid on a percentage commission, which rises with the rate of seizures. This strategy predictably redounded to the State's

[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.

financial benefit. In 2001, the Controller had seized property worth approximately $2.7 billion; by 2007, it had grown to $4.1 billion from 8.7 million persons. Today, the Controller holds property valued at over $7.6 billion, taken from over 28.6 million persons.[2] The California property seizures are growing at an exponential rate, and there is clearly little regard for "reuniting" "unknown" owners with their "unclaimed property" prior to its seizure and sale.

The risk of erroneous seizures is heightened by the profit motives created by the State's scheme. The Controller hires private companies to audit holders' books and records and to instruct the holders as to the property subject to confiscation by the Controller. The auditors are paid a commission of 11% on everything seized by the Controller, so that their profits are directly tied to the amount of property the Controller takes. The scheme requires that the property must be sold in order to pay the auditors their percentage, and to guard against price fluctuation in the property's value, such as in the case of stocks.

Once auditors have identified the "abandoned" property, holders are required to send the Controller a statutorily mandated notice report ("Notice Report") listing the properties in question, the

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[2] California State Controller's Office, *Unclaimed Property Main Page*, available at http://www.sco.ca.gov/upd.html (last visited, Aug. 3, 2015).

owners' names, and their last known addresses. Holders are not required to report the owner's Social Security Number (SSN) for any type of escheated property, even if the holder possesses the SSN. Notably, any person who does not have a Social Security Number and does not reside in the State of California will receive neither direct mail nor publication notice.

The Notice Report must be filed no later than November 1 each year. Cal.Code Civ.Proc., § 1530(d). The Controller is required to send a "pre-escheat notice" to owners listed on the holder's Notice Report within 165 days of the November 1 filing. *Id.*, § 1531(d). No sooner than seven months and no later than seven months and 15 days after the November 1 report, holders are required to pay or deliver to the Controller "all escheated property specified in the report." *Id.*, § 1532. In most instances, the Controller uses the same address information provided by the holders, which is already known to be stale (indeed, that is the reason the holder is providing the ownership information and the property to the Controller in the first place).

Hence, the UPL requires the Controller to send pre-escheat notice to property owners on or about April 15, and holders must deliver escheated property to the Controller every year between June 1 and June 15.

The UPL's "notification program" for property valued under $50 requires of the Controller no

attempt at any individualized notice whatsoever, even on multiple payments owed to a single owner that exceeds $50, such as in the case of royalty checks. The Controller maintains no records for these property owners at all. Their accounts are aggregated into a single lump sum with no names on the government website, e.g. "State Farm Insurance Policyholders - $6 Million." For property whose value exceeds $50, the "notification program" has three principal components.

First, the UPL requires a series of manifestly inadequate steps at individualized notification: If the Notice Report provides the Controller with the owner's SSN, Section 1531 requires the Controller to send the owner's name and SSN to the Franchise Tax Board ("FTB") to determine whether the FTB has a Current address for that person. *Id.*, § 1531(d). If the FTB address and the holder's address are the same, the Controller sends notice to that address. If the FTB has an address different from that provided by the holder, the Controller mails notice to the FTB address only; she does not send any notice to the address reported by the holder. If the FTB has no address, the Controller sends notice to the address reported by the holder ("the Last Known Address" or "LKA"), which is already known to be a stale address.

If the holder does not provide an SSN, the Controller does not request information from the FTB or any other electronic database accessible to

her; she sends notice only to the stale address reported by the holder.

Second, Section 1531 also provides for newspaper publication notice, which the Controller has implemented though a practice of generic, inconspicuous 3" x 5" "block" publication notices in newspapers that do not provide actual notice to the owners. Sample advertisements are reprinted at Pet. App. 73a-74a. The generic advertisements are often published on dates calculated to reduce readership, *e.g.*, Thanksgiving Day. Indeed, it is overwhelmingly likely that only a miniscule fraction of affected property owners will actually chance upon them. Until 1989, the Controller interpreted the same statutory language to require publication of the "names" of owners and a description of "the property," which was published in alphabetical order in yearly newspaper inserts in the State's major papers.

The third part of the Notification Program is a website maintained by the Controller, which in theory allows property owners to search online for property appropriated by the Controller, *assuming* that data relevant to seized property is properly inputted into the system. (In the case of Petitioner Chris Lusby Taylor, for example, his two accounts were run together in the Controller's website into a single name: "Lusbychristaylor" and "Chrislusbytaylor.") Owners who locate their property online may submit a claim form to the Controller. Thus, the Controller shifts the burden of

notice from the government to the citizen, who must ferret out his or her own property by running queries on a government website search engine. In most instances, the property has already been sold by the time it appears on the website, which is merely a catalogue of sold property, though the website identifies the property as though it might still exist.

The Controller makes no use of readily available state and local governmental agency databases, like the DMV database, to locate property owners to give them notice of the State's seizure of their property. The Controller does not use such readily available databases either *before* or *after* seizing property – as authorized by Section 1531.5 – even though property owners would in all likelihood be found without difficulty at the addresses that the Controller can readily and cheaply obtain from the DMV and other governmental databases. In many instances, the same databases the State uses to locate residents to force them to pay taxes due and owing in the first place. The Controller accesses the DMV only when the owner steps forward to claim the property in order to confirm his or her identity.

Further, the Controller has ready access to commercial databases such as Accurint to locate owners of unclaimed property. Yet the Controller does not use either Accurint or any other commercial database to locate the purportedly "unknown" owners of "unclaimed" property before or after their property is taken for use by the State and sold. CA9 Excerpts of Record at 22:12-20. Nor has the

Controller spent funds earmarked for costs and expenses incurred implementing and operating the Notification Program as authorized by the Legislature, much less requested additional funds. *Id.* at 16:20-22.

The palpable inadequacy of this notification scheme is confirmed by the end results. In 2008, no fewer than 75,000 notice letters sent to property owners were returned to the Controller because they were sent to the wrong address without any additional steps being taken to find the owner. *Id.* 16:23-25. That number has increased each year. Despite the advances in technology and readily available governmental and commercial databases that could be used to locate the hundreds of thousands of persons whose property the Controller takes each year without notice. While using the same technologies and databases to compel taxes and even pay claims under the UPL program, the State refuses to take these same simple steps to provide critical information to owners to enable them to reclaim their property.

B. Procedural History

On December 31, 2001, Petitioners filed a putative class action in the U.S. District Court for the Eastern District of California against the Controller challenging the constitutionality of the UPL on its face and as administered. The district court dismissed this case on Eleventh Amendment grounds, and the Ninth Circuit reversed and

remanded. *Taylor v. Westly*, 402 F.3d 924, 929-36 (9th Cir. 2005).

On June 2, 2005, Petitioners moved the District Court for a temporary restraining order and preliminary injunction enjoining enforcement of the UPL. On August 16, 2005, the District Court denied Petitioners' motion.

On April 30, 2007, the Ninth Circuit again reversed and remanded with instructions to the District Court to grant a preliminary injunction. *Taylor v. Westly*, 488 F.3d 1197 (9th Cir. 2007) (per curiam). The Court of Appeals held that Petitioners were likely to prevail on their challenge to the UPL under the Due Process Clause and noted the danger of "the permanent deprivation of [Petitioners'] property subsequent to California's sale of that property, which – pursuant to California's policy of *immediately* selling property after escheat – would frequently occur even if plaintiffs were diligent about monitoring their property." *Id.* at 1200 (emphasis in original).

The Ninth Circuit opined that the Controller was required to notify property owners of the impending seizure of their property *prior to* the seizure, in a manner reasonably calculated under all the circumstances to apprise them of that impending seizure and afford them an opportunity to object: "[b]efore the government may disturb a person's ownership of his property, 'due process requires the government to provide notice reasonably calculated,

under all the circumstances, to apprise the interested party of the pendency of the action and afford him an opportunity to present his objections.'" *Id.* at 1201 (citation omitted).

The Court of Appeals held that the Controller's mailings went "to some, but not all, individuals whose property has been escheated" and "[did] not respond to the requirement that notice be given before an individual's control of his property is disturbed" (i.e. escheated). *Id.* Further, "mere publication is not constitutionally adequate." *Id.* "California cites no authority for the proposition that due process is satisfied by a newspaper advertisement saying that a person concerned about his property can check a website to see whether he has already been (or soon will be) deprived of it." *Id.* The Ninth Circuit held that the State was required to take action to "remedy the constitutional problem with its escheat statute," specifically, the lack of adequate notice. *Id.* at 1202.

On remand, the District Court issued a preliminary injunction enjoining the Controller from receiving, taking title to, possessing, selling, or destroying any property pursuant to the UPL "until the Controller has first promulgated regulations providing for fair notice to the owner and public, satisfactory to and approved by this court." *Taylor v. Chiang*, No. CIV. S–01–2407 WBS GGH, 2007 WL 1628050, *5 (E.D.Cal. June 1, 2007).

On August 21, 2007, the California Legislature passed the Controller-sponsored Senate Bill 86 (hereinafter "SB 86"), ostensibly to bring the UPL into compliance with the United States Constitution. SB 86 established the statutory scheme described in Part A, *supra*. Rather than shrink after the passage of SB 86 as might reasonably have been expected, the amount of property seized and held by the State actually ballooned to $7.6 billion, a four-fold (4x) increase in seized property since the inception of the case. Thus, although at first blush SB 86 appeared to be an improvement, it has become increasingly clear that it is an artifice by which the State has attempted to disguise its unconstitutional scheme as a permissible system. Statistics gleaned from the Controller's own records and website reveal the flaws in SB 86:

- In 2001 when the case began 5 million citizens were listed as "unknown"; as of 2007, and prior to enactment of SB 86, the Controller held property belonging to 8.7 million persons; by 2011, that number had increased to 17.6 million – a 101% increase, to nearly *half* the State's inhabitants – and today the number is up to 28.6 million;

- As of 2007, the Controller had taken approximately $4.1 billion in property; by 2012, the dollar amount of the seized property had increased to $6.1 billion – a 33% increase – and now stands at $7.6 billion;

- On average, in the four fiscal years prior to passage of SB 86, the Controller returned $261 million worth of property to owners of unclaimed property; in the following four fiscal years, the Controller returned on average $246 million per year, despite a $2 billion dollar increase in the amount of property taken.

CA9 Excerpts of Record at 21:15-22:12.

As these numbers reflect, SB 86 was mere window dressing. Each year, the Controller seizes, holds, and frequently auctions off private property worth hundreds of millions of dollars without due process of law.

On September 5, 2007, the Controller moved the District Court for an order dissolving the injunction in view of SB 86. The District Court granted the motion. Petitioners appealed the injunction's dissolution.

On May 12, 2008, with the revised UPL in operation just seven months, the Ninth Circuit held that the District Court's dissolution of the injunction was not an abuse of discretion. *Taylor v. Westly*, 525 F.3d 1288 (9th Cir. 2008). The Court of Appeals opined that SB 86 "[o]n its face" brought the UPL into compliance with the Constitution's due process requirements, *id.* at 1289, although the Ninth Circuit cautioned that the issues before it were limited and the abuse of discretion standard was a deferential one: "The Controller has hardly begun enforcing the new escheat law. We cannot say, on

the record before us, that the district court abused its discretion in dissolving the preliminary injunction. Our review in this case is confined by our limited standard of review, and is not a definitive adjudication of the constitutionality of the new law and administrative procedure." *Id.* at 1290. The Court of Appeals expressly noted Petitioners' objections that the Controller may "administer the statute in such a way that the State still does not give notice reasonably calculated to reach people whose property is taken by the State of California under its escheat law." *Id.*[3]

On July 25, 2012, Petitioners filed their Second Amended Complaint, alleging that the Controller continues to seize and hold property without providing constitutionally adequate prior notice (before the property in question is seized) and without constitutionally adequate post-deprivation remedies by which owners can get their property

[3] In the related case *Suever v. Westly*, 579 F.3d 1047 (9th Cir. 2009), the Ninth Circuit rejected controlling authority that the State owes interest to the "unknown" private owners for the use of their funds held in trust while they are located at the rate at which the "use of those funds" is "economically equivalent to" as required by this Court's holding in *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 162 (1980), and the Ninth Circuit's rulings in *United States v. $277,000 of United States Currency*, 69 F.3d 1491, 1495-96 (9th Cir. 1995), and *United States v. $133,735.30 Seized From U.S. Bancorp Brokerage Account*, 139 F.3d 729, 731-32 (9th Cir.1998).

back. The Second Amended Complaint included a claim (the Seventh Count) based on the Takings Clause of the Fifth Amendment.

On August 8, 2012, the Controller filed a motion to dismiss per Rule 12(b)(6). On November 14, 2012, the District Court granted the motion to each cause of action pled by Petitioners. Pet. App. 26a-34a. The District Court expressly addressed and dismissed the Takings Claim. *Id.* at 31a.

On appeal, Petitioners raised both due process and takings claims. With respect to the latter, Petitioners argued in their opening Appellants' brief in the Ninth Circuit:

> The constitutionality of escheat laws is premised on the idea that the state is not arbitrarily taking title to private property in the absence of some compelling need to do so, but rather holding it in a "custodial trust" and "subject to the rights of claimants to appear and claim the escheated property." However, this supposition assumes that the property is being held in good faith, properly accounted for and maintained, and returned without undue burden or delay. . . . [T]he Controller's contention that he is holding property in "trust" is a fiction designed to justify what is in reality a permanent taking of property without due process of law or just compensation.

Appellants' Brief, ECF 12-17828, Dkt. 8, pp. 47-49 (CA9 filed April 24, 2013) (citations omitted).

C. The Decision Below

The Ninth Circuit affirmed. The Court of Appeals rejected Petitioners' claim that the Controller has failed to provide constitutionally adequate notice and failed to take adequate steps to locate and notify property owners. The Ninth Circuit acknowledged that Petitioners' "suggested requirement that the Controller utilize additional governmental databases may, of course, lead to more claims being filed" (Pet. App. 22a), but it held that the California UPL scheme "exceeds the minimum due process requirements." *Id.* In particular, the Ninth Circuit opined:

> If provided with a Social Security number, the Controller utilizes the Franchise Tax Board's database to determine if there is a more current address. The Controller also provides notice in the newspaper to explain to the public generally that it is holding properties that may belong to the readers. Finally, the Controller maintains a searchable website where individuals can determine whether they are the owners of unclaimed property, and if so, can submit a claim form.
>
> *Id.*

The Ninth Circuit held that the Controller was not required to make any effort to locate property

owners using other readily available means, such as publicly accessible databases. *Id.* at 22a-23a. The Court of Appeals also rejected Petitioners' objection that the appropriation of property under the UPL is carried out by private companies suffering from a conflict of interest, even though they receive as compensation a portion of the escheated property's value and hence have a built-in incentive *not* to return property to its lawful owners. *Id.* at 24a.[4]

The Ninth Circuit denied Petitioners' timely petition for rehearing on May 7, 2015. *Id.* at 35a.[5]

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[4] The Ninth Circuit did not expressly address Petitioners' takings claim, except to note that "Appellants argue that the Controller's post-escheat procedures violate the Due Process and Takings Clauses because they do not provide an adequate remedy when the Controller denies an individual's claim to escheated property." Pet. App. 3a.

[5] In a series of rulings, the state courts of California have immunized the Controller and holders delivering supposedly unclaimed property to the state, denying state-law relief from California's unconstitutional UPL, *Azure Ltd. v. I-Flow Corp.*, 210 P.3d 1110 (Cal. 2009), *citing with approval Fong v. Westly*, 12 Cal.Rptr.3d 76 (Cal. App. 2004) *and Harris v. Westly*, 10 Cal.Rptr.3d 343 (Cal. App. 2004), making the federal courts the only forum in which a meaningful remedy is available. Indeed, *Fong* and *Harris* relied on the bizarre argument that the mere existence of the statute constitutes notice that property could be taken, *Fong*, 12 Cal.Rptr.3d at 84; *Harris*, 10 Cal.Rptr.3d at 349 n.15, which not even the Ninth Circuit endorsed in the ruling at bar.

REASONS FOR GRANTING THE WRIT

At minimum, the Ninth Circuit's judgment in this case should be GVR'ed in light of *Horne v. Department of Agriculture*, No. 14-275, 135 S. Ct. 2419 (June 22, 2015). *Horne* makes clear that the UPL scheme implicates *both* the Takings Clause of the Fifth Amendment *and* the Due Process Clause of the Fourteenth Amendment, and the Ninth Circuit applied the incorrect legal standard by failing to review the UPL scheme under the Fifth Amendment.

In addition, this Court's plenary review is warranted because the Ninth Circuit's judgment cannot be squared with precedent of this Court regarding the predeprivation notice required by the Due Process Clause, including *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), and *Jones v. Flowers*, 547 U.S. 220 (2006). The Ninth Circuit's judgment also conflicts squarely with numerous decisions by other courts of appeals, as discussed below.

Further, this case involves an important issue of law involving the property rights of millions of people (many of whom reside in other States and countries) as to which this Court's review is urgently needed. Every year, tens of thousands of California residents, including many elderly residents of limited means, suffer the appropriation of their property with no meaningful notice and no meaningful avenue of recourse. Retirement stock savings, which were intended as a hedge against

time, are seized from the owner without notice and sold for a fraction of their value. Such a blatantly unconstitutional system, which serves only the fiscal self-interest of California, warrants this Court's review. Moreover, state unclaimed property laws are intertwined, so that the decision under review will become the national standard applied by the other States. This Court should provide guidance on the constitutional standards such schemes must satisfy.

I. The Ninth Circuit's Judgment Should Be GVR'ed In Light Of *Horne v. Department Of Agriculture*, No. 14-275.

Subsequent to the Ninth Circuit's decision in this case on March 11, 2015, this Court issued its opinion in *Horne v. Department of Agriculture*, No. 14-275, 135 S. Ct. 2419 (U.S. June 22, 2015), which makes clear that the Court of Appeals applied the incorrect legal standard to Petitioners' constitutional challenge to the California UPL. This case should be GVR'ed to permit the Ninth Circuit to apply the proper legal standard in the first instance.

In the decision below, the Ninth Circuit treated the UPL scheme as though it automatically provides property owners with the ability to reclaim their property from the Controller's custody. Pet. App. 7a, 17a n.6. But in fact the scheme ensures that the property owner will typically receive only the *funds from the sale of the permanently destroyed property*. The private property in question (such as stocks, the

contents of safe deposit boxes, and so on) is routinely taken without constitutional notice, is quickly sold or otherwise destroyed, and then is monetized for use by the Controller and the private companies that administer the UPL scheme. For example, the contents of safe deposit boxes are held for varying periods of time and then auctioned off on eBay.[6] Stock accounts are held for 18 months and then liquidated.[7] The Ninth Circuit itself noted (in an earlier appeal) the danger of "the permanent deprivation of [Petitioners'] property subsequent to California's sale of that property, which – pursuant to California's policy of *immediately* selling property after escheat – would frequently occur even if plaintiffs were diligent about monitoring their property." 488 F.3d at 1200 (emphasis in original).

Under the UPL scheme, the Controller physically appropriates private property and as a

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[6] ABC Good Morning America, *Not-So-Safe-Deposit Boxes: States Seize Citizens' Property to Balance Their Budgets* (May 12, 2008):http://www.youtube.com/watch?v=ZdHLIq0qHhU, http://abcnews.go.com/GMA/story?id=4832471&page=1#.Udhur5yLfCY.

[7] California State Controller's Office, *About the Unclaimed Property Program*, available at: http://www.sco.ca.gov/upd_faq_about_q01.html (last visited, Aug. 2, 2015) ("Your investment accounts will be turned over to the State Controller's Office, which is required by law to sell the securities, no sooner than 18 months and no later than 20 months, after the due date for reporting the securities to the State Controller's Office.").

matter of course permanently divests owners of that property. Once this property is auctioned off or destroyed by the operation of the UPL scheme, *at most* the rightful owner will be offered part of the monetary proceeds of the sale – which will afford little comfort or relief to the owner in circumstances where the sentimental value of the property (such as family heirloom jewelry in a safe deposit box) far exceeds its commercial value.

The Controller's physical appropriation of that personal property under the UPL scheme is constitutionally significant under this Court's recent decision in *Horne*, No. 14-275, 135 S. Ct. 2419 (June 22, 2015), which focused on the physical appropriation of personal property as a key element in its taking analysis. This Court noted "the settled difference in our takings jurisprudence between appropriation and regulation" and held that the Ninth Circuit had erred in analyzing the seizure of raisins as a restriction on the use of personal property. *Id.* at 2428. This Court opined that the seizure was a physical appropriation of property, giving rise to a *per se* taking: "The Government's 'actual taking of possession and control' of the reserve raisins gives rise to a taking as clearly 'as if the Government held full title and ownership,' as it essentially does." *Id.* This Court explained that a physical appropriation of personal property should be treated as a taking, even if its economic impact is no different from a regulation: "A physical taking of raisins and a regulatory limit on production may

have the same economic impact on a grower. The Constitution, however, is concerned with means as well as ends." *Id.* Moreover, this Court held that possible residual compensation offered to an owner, after physical appropriation of the property itself, did not excuse the taking; this Court brushed off "the speculative hope that some residual proceeds may be left when the Government is done with the raisins." *Id.*

Just as the Ninth Circuit erred in *Horne*, it made a similar category error in this case, by analyzing the UPL scheme solely in procedural due process terms. Clearly, the UPL statute does not effect simply a *deprivation* of property without due process – it also effects a governmental *appropriation* and hence a per se *taking* of private property. The Ninth Circuit decisions analyzed the property seizures as though the property was held in custody, "like a car that is towed and held in an impound lot," *Taylor*, 402 F.3d at 931, when in reality the property is sold or otherwise monetized in order to pay the commissioned auditors and for use by the State. In effect, the Ninth Circuit failed to recognize that the State is selling and using the private cars in its analogous "impound lot." The Ninth Circuit cited and purported to follow this Court's decisions in *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), and *Jones v. Flowers*, 547 U.S. 220 (2006). As discussed in Part II, *infra*, the Ninth Circuit did not properly apply those decisions. But

even more fundamentally, *Mullane* and *Flowers* are procedural due process cases, not takings cases.

At minimum the Ninth Circuit's judgment should be GVR'ed so that the Court of Appeals can analyze whether the unclaimed property statutory scheme complies with the duty to pay just compensation under the Fifth Amendment, as applied to the States through the Fourteenth. The Court has held that the government has a "categorical duty" under the Fifth Amendment to pay just compensation when it "physically takes possession of an interest in property." *Arkansas Game & Fish Comm'n v. United States*, 133 S. Ct. 511, 518 (2012). *Horne* reaffirmed that this rule applies in full to personal property. *See* 135 S. Ct. at 2426 ("The Government has a categorical duty to pay just compensation when it takes your car, just as when it takes your home.").

Under the just compensation requirement of the Fifth Amendment, the government must establish the existence of a "'reasonable, certain and adequate provision for obtaining compensation' at the time of [a] taking." *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 124-25 (1974) (quoting *Cherokee Nation v. Southern Kansas R. Co.*, 135 U.S. 641, 659 (1890)). And, to be adequate, compensation must represent "the full and perfect equivalent in money of the property taken. The owner is to be put in as good [a] position pecuniarily as he would have occupied if his property had not been taken." *United States v. Miller*, 317 U.S. 369, 373 (1943).

Under the Takings Clause, if there is no adequate mechanism for just compensation, the government is prohibited from taking the private property in the first place. *See, e.g.*, *Eastern Enters. v. Apfel*, 524 U.S. 498, 538 (1998) (opinion of O'Connor, J., joined by three Justices) (directing injunction against uncompensated taking). Accordingly, if it is impracticable to locate and provide meaningful notice to property owners – i.e., if just compensation is impossible to provide – then the UPL scheme is impermissible under the Takings Clause, and the State is not allowed to appropriate the owners' private property in the first place.

At minimum, therefore, this case should be remanded to the Ninth Circuit for a re-examination of the constitutionality of the UPL system under the proper legal standard.

II. Certiorari Is Warranted To Review The Constitutionality Of The California UPL Scheme Under The Due Process Clause.

This Court's plenary review is also warranted to review the constitutionality of the UPL scheme as a matter of procedural due process.

A. The Ninth Circuit's Judgment Conflicts With This Court's Decisions Establishing The Notice Requirements of Due Process.

The Ninth Circuit's decision cannot be squared with this Court's decisions establishing the predeprivation notice required by the Due Process Clause, even in cases where the government has no

direct stake in the outcome. Where the government's own fiscal self-interest is involved, the requirements of due process should be even more stringent. In a wide variety of contexts, this Court has warned that the government's financial interest (as well the financial interest of whatever agent the government uses to administer its scheme) creates the danger of self-dealing that raises constitutional red flags and triggers heightened judicial scrutiny. This Court has long expressed constitutional "concern with governmental self-interest" when "the State's self-interest is at stake.'" *United States v. Winstar Corp.*, 518 U.S. 839, 896 (1996) (quoting *United States Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1, 26 (1977). In *Winstar*, the Court spoke of the "taint" of "a governmental object of self-relief" where the government is party to a contract. *Id.*; *see also Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 412-13 & n.14 (1983) (holding that a stricter level of scrutiny applies under the Contract Clause when a State alters its own contractual obligations).

In *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), even when the exacerbating feature of fiscal self-interest was absent, this Court held that notice by newspaper publication was insufficient with respect to known present beneficiaries of a trust and did not satisfy due process. This Court observed that the "elementary and fundamental requirement of due process . . . is notice reasonably calculated, under all the

circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* at 313. "[P]rocess which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." *Id.* at 315.

The record in this case demonstrates that the California UPL falls below the standards of *Mullane,* even though technological advances since 1950 make it vastly *easier* to locate individuals now than it was when *Mullane* was decided. The California scheme has resulted in the absurd situation where approximately 28.6 million of California's 38 million total inhabitants are listed as "unknown." The Controller holds property amounting to more than $7.6 billion (as an interest-free loan, *see* n.3, *supra*) belonging to such supposedly "unknown" persons as the Queen of England (Elizabeth Windsor), Vladimir Putin, Presidents George W. Bush and Barack Obama, one member of the California Supreme Court, two of the judges on the Ninth Circuit panel that heard this case below, and nearly every district judge in the Eastern District of California.

The results of this fatally flawed system speak for themselves. The ostensible statutory purpose of the UPL program is to locate and return private property to "unknown" owners, and not to declare "known" citizens to be "unknown" simply for purposes of seizing their property for use by the State. California's procedures have hardly produced

"notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." 339 U.S. at 313. Indeed, the opposite is true.

Further, the Controller does not provide *Mullane*-style constitutional "publication notice," but merely generic "advertisements." *Mullane* held that such advertisements are not constitutionally adequate (except in special circumstances) because "[c]hance alone" brings a person's attention to "an advertisement in small type inserted in the back pages of a newspaper." *Mullane*, 339 U.S. at 315. Even the Ninth Circuit previously held such advertisements to be insufficient as a matter of due process. *Taylor*, 488 F.3d at 1201; *see also Suever v. Connell*, 439 F.3d 1142, 1148 (9th Cir. 2006); *Taylor v. Westly*, 402 F.3d 924, 926-29 (9th Cir. 2005); *Shipes v. Trinity Industries*, 987 F.2d 311, 322 (8th Cir. 1993); *Hall v. Borough of Roselle*, 747 F.2d 838, 843 (3d Cir. 1984).

Nor does the Controller's "searchable website" provide constitutionally adequate notice. In reality, the website conveys no notice at all to property owners and is nothing more than a catalogue of the owners' sold and destroyed property. As the Ninth Circuit previously acknowledged, "California cites no authority for the proposition that due process is satisfied by a newspaper advertisement saying that a person concerned about his property can check a

website to see whether he has already been (or soon will be) deprived of it." 488 F.3d at 1201.

Moreover, the State does not provide any notice (direct mail, publication notice, or even listing the owners' names on the searchable website) with respect to property valued under $50. This is not a small matter. The Controller recently disclosed that he has seized $68 million since 2007 in amounts less than $50 belonging to citizens without even requesting the names of the owners or providing any notice whatsoever.[8]

California likewise provides no notice to residents of other States whose property is taken and sold – these individuals do not pay taxes in California, hold no residency in the State, and would have no reason to be alerted by a generic advertisement published in a California newspaper, or to search the California Controller's website.

A fortiori, the Ninth Circuit's decision cannot be squared with *Jones v. Flowers*, 547 U.S. 220 (2006), in which this Court held that "[b]efore a state may take property and sell it for unpaid taxes, the Due Process Clause of the Fourteenth Amendment

[8] CBS News, Call Kurtis Investigates: State Can Keep Your Unclaimed Money Under Bill Meant To Close Loophole (June 6, 2013): http://sacramento.cbslocal.com/2013/06/06/call-kurtis-investigates-state-can-keep-your-unclaimed-money-under-bill-meant-to-close-loophole/#.UbJVXKCsoJE.email

requires the government to provide the owner 'notice and opportunity for hearing appropriate to the nature of the case.'" *Jones*, 547 U.S. at 223 (quoting *Mullane*, 339 U.S. at 313). This Court held "that when mailed notice of a tax sale is returned unclaimed, the State must take *additional reasonable steps* to attempt to provide notice to the property owner before selling his property, if it is practicable to do so." *Id.* at 225 (emphasis added). The Court found there were "several reasonable steps the State could have taken," and that "[w]hat steps are reasonable in response to new information depends upon what the new information reveals." *Id.* One reasonable step would have been for the State to "resend notice by regular mail, so that a signature was not required." *Id.* This would "increase the chances of actual notice to [the petitioner] if—as it turned out—he had moved." *Id.* at 235. This Court concluded:

> There is no reason to suppose that the State will ever be less than fully zealous in its efforts to secure the tax revenue it needs. The same cannot be said for the State's efforts to ensure that its citizens receive proper notice before the State takes action against them. In this case, the State is exerting extraordinary power against a property owner-taking and selling a house he owns. It is not too much to insist that the State do a bit more to attempt to let him

> know about it when the notice letter addressed to him is returned unclaimed.

Id. at 239.

Precisely the same reasoning applies here. In *Jones*, this Court reasoned that a State may not rely solely on mailed notice "when the government learns its attempt at notice has failed." *Id.* at 227. The record evidence in this case demonstrates that California's attempts at notice under the UPL scheme have predictably failed, not once but *millions of times*. The scheme has resulted in a situation where millions of people have been denied meaningful notice of the seizure of their property, just as the homeowner in *Jones* was not afforded meaningful notice. And just as in *Jones*, "the government's knowledge that notice pursuant to the normal procedure was ineffective triggered an obligation on the government's part to take additional steps to effect notice." *Id.* at 230.

The Ninth Circuit claimed support from this Court's statement in *Jones* that the state commissioner in that case was not necessarily required to search for the homeowner's "new address in the Little Rock phonebook and other government records such as income tax rolls." *Id.* at 235–36. But this Court made clear in *Jones* that the State *was* required to undertake "reasonable steps" to provide notice and "[w]hat steps are reasonable in response to new information depends upon what the new information reveals." *Id.* at 234. This Court's

reference to the Little Rock phonebook and income tax rolls was simply a contextual judgment based on the specific facts of *Jones*. It was used to illustrate a time-intensive, unreasonable burden placed on a government official. But today, advances in technology, private databases, and computer-indexed government databases ensure that almost no one is genuinely "unknown."

In *Jones*, this Court cited *Plemons v. Gale*, 396 F.3d 569 (4th Cir. 2005) (cited in *Jones*, 547 U.S. at 227), which observed that, "as most cases addressing this situation recognize, it is, at the very least, reasonable to require examination (or reexamination) of *all available public records* when initial mailings have been promptly returned as undeliverable." 396 F.3d at 577 (emphasis added). "Extraordinary efforts typically describe searches *beyond* the public record, not searches *of* the public record." *Id.* (internal quotation marks and citation omitted and emphasis in original).

Similarly, in *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983), the Court held that when the identity and location of a mortgagee can be obtained through examination of public records, "constructive notice alone does not satisfy the mandate of *Mullane*." *Id.* at 798. Moreover, a "party's ability to take steps to safeguard its interests does not relieve the State of its constitutional obligation." *Id.* at 799. Although a party required to provide notice need not "undertake extraordinary efforts to discover ... whereabouts ...

not in the public record," it must use "reasonably diligent efforts to discover addresses that are reasonably ascertainable." *Id.* at 798.

The Ninth Circuit's decision in this case is strikingly inconsistent with this Court's precedent.

B. The Ninth Circuit's Judgment Is Inconsistent With Decisions By Other Courts of Appeals.

This Court's plenary review is also warranted because the Ninth Circuit's decision conflicts with decisions by other courts of appeals, which have faithfully applied this Court's precedent to strike down state schemes that fail to provide adequate notice to property owners.

- ***First Circuit.*** In *Garcia-Rubiera v. Fortuno*, 665 F.3d 261 (1st Cir. 2011), the First Circuit held that, under *Jones v. Flowers*, Puerto Rico failed to give constitutionally adequate notice to insureds in connection with reimbursements for mandatory automobile insurance, which would otherwise escheat to the Commonwealth. The First Circuit explained that Puerto Rico had established a reimbursement procedure, but "has failed to give insureds notice of the contents of that procedure or where to find it. In fact, insureds will not find it unless they go in person to the proper office of government and make an 'appropriate request' for a copy of the regulation." *Id.* at 263-64.

  In addition to receiving no notice about the Commonwealth's procedures for

> reimbursement, insureds receive no individual notice that their duplicate payments have been transferred from their private insurers to the Commonwealth, or that they may apply directly to the Secretary of the Treasury for reimbursement after this transfer. They also receive no individual notice that their duplicate payments will escheat to the Commonwealth after five years, and so be permanently lost to them.

Id. at 263-64. The California UPL scheme, which denies meaningful notice to millions of property owners, suffers from the same constitutional defect. *See also Garcia-Rubiera v. Fortuno*, 727 F.3d 102, 112-13 (1st Cir. 2013) ("The district court must weigh the vehicle owners' collective interest in adequate notice of their reimbursement rights against the cost to the Commonwealth of publishing notice in an additional newspaper and repeating the notices over a second consecutive week."); *United States v. One Star Class Sloop Sailboat*, 458 F.3d 16, 23-24 (1st Cir. 2006) ("this paradigm means, in general, that when the government knows or easily can ascertain the identity and whereabouts of a potential claimant, reasonableness requires the government, at a minimum, to take easily available steps in its attempt to notify the claimant").

- ***Second Circuit.*** In *Luessenhop v. Clinton Cnty., New York*, 466 F.3d 259 (2d Cir. 2006), the Second Circuit remanded three foreclosure cases for a redetermination of whether notice was sufficient in

light of this Court's decision in *Jones v. Flowers.* In one of the cases (*Tupazes*), the initial letter informing the homeowner of a delinquency was sent via first-class mail and not returned as undeliverable; the second letter was sent via certified mail but no signature confirmation (although print-out tracking statement showed letter was delivered). In another case (*Bouchard*), the letter sent via certified mail but returned as unclaimed. Both of these situations involve much greater notice than is typically afforded in the administration of the California UPL.

- ***Third Circuit.*** In *Perez-Alevante v. Gonzales*, 197 F. App'x 191 (3d Cir. 2006), the Third Circuit held that notice was insufficient under *Jones v. Flowers* in connection with the affirmance by the Board of Immigration Appeals of the denial of a motion to reopen in absentia removal proceedings for a lawful permanent U.S. resident. The relevant statute required notice for removal in absentia "if the Service establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is removable.... The written notice by the Attorney General shall be considered sufficient for purposes of this paragraph if provided at the most recent address provided under Section 1229(a)(1)(F) of this title." *Id.* at 194 (quoting 8 U.S.C. § 1229a(b)(5)(A)). The criminal alien in *Perez-Alevante* was represented by counsel who never received any notices that were mailed to the alien's purported address: "Considering that 'the

constitutionality of a particular procedure for notice is assessed ex ante,' [citing *Jones v. Flowers*], we have no difficulty in finding that the additional step of providing notice to Perez–Alevante's counsel, where the immigration court knew he was represented by counsel and was in possession of that counsel's contact information, was required by the Due Process Clause." *Id.* at 196.

• ***Fourth Circuit.*** As noted earlier, in *Plemons v. Gale*, 396 F.3d 569 (4th Cir. 2005), the Fourth Circuit held that a purchaser in a state tax sale was required to search all publicly available county records to determine the correct address for a vendor. The court of appeals observed that, "as most cases addressing this situation recognize, it is, at the very least, reasonable to require examination (or reexamination) of *all available public records* when initial mailings have been promptly returned as undeliverable." *Id.* at 577 (emphasis added). The Fourth Circuit cited other cases recognizing that "[g]enerally, when the notice is returned as undeliverable, the tax district should conduct a reasonable search of the public record." *Id.* at 575 (internal quotation marks and citation omitted).

• ***Fifth Circuit.*** In *Echavarria v. Pitts*, 641 F.3d 92 (5th Cir. 2011), as revised (June 21, 2011), the Fifth Circuit held that the government must take additional steps to notify a bond obligor that the bond has been breached when the government has knowledge that the initial attempt at notice failed. Applying *Jones v. Flowers*, the Fifth Circuit held

that the government was requited to "take additional reasonable steps to notify the bond obligors of the bond demands." *Id.* at 95.

- ***Seventh Circuit.*** In *Peralta-Cabrera v. Gonzales*, 501 F.3d 837 (7th Cir. 2007), the Seventh Circuit held that notice in a deportation proceeding was inadequate, even though the government alleged that the defendant had "thwarted delivery" of notice of deportation hearing where he gave the full, correct address where he would be staying but failed to instruct authorities to address mail to him "in care of [another person]." *Id.* at 843. The Seventh Circuit reasoned that "the government, not the alien, is in the best position to know how to properly address a hearing notice." *Id.* at 845 (internal quotation omitted).

- ***Eighth Circuit.*** In *Linn Farms & Timber Ltd. P'ship v. Union Pac. R. Co.*, 661 F.3d 354 (8th Cir. 2011), the Eighth Circuit held that notice in connection with the forfeiture of mineral rights due to tax delinquencies was insufficient under *Jones v. Flowers*, where notices of delinquency were sent to a former corporate office and both were returned as undeliverable and unable to be forwarded. *Id.* at 356-58, 362. The Eighth Circuit suggested that the Commissioner could have performed a search of electronic records or an internet search for the owner's address. *Id.* at 360-61.

The Ninth Circuit's judgment is thus in conflict with decisions in many other courts of appeals.

CONCLUSION

The Petition for Writ of Certiorari should be granted. At the very least, the Ninth Circuit's judgment in this case should be GVR'ed in light of *Horne v. Department of Agriculture*, No. 14-275, 135 S. Ct. 2419 (June 22, 2015).

Respectfully submitted.

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Dated: August 5, 2015

APPENDIX

APPENDIX A

United States Court Of Appeals
For The Ninth Circuit

Chris Lusby TAYLOR, et al., Plaintiffs – Appellants,

v.

Betty YEE, individually and in her official capacity as State Controller of the State of California; Richard Chivaro, Defendants – Appellees

No. 12-17828

March 11, 2015

Before SCHROEDER and SILVERMAN, Circuit Judges and HUCK, Senior District Judge.

HUCK, Senior District Judge:

I. INTRODUCTION

This putative class action has a long and tortuous history in this Court. Presumably this opinion will be known as *Taylor V.*[1] Appellants

[1] This Court's prior decisions in this matter are: *Taylor v. Westly* (*Taylor I*), 402 F.3d 924 (9th Cir.2005); *Taylor v. Westly* (*Taylor II*), 488 F.3d 1197 (9th Cir.2007) (per curiam); *Taylor v. Westly* (*Taylor III*), 525 F.3d 1288 (9th Cir.2008) (per curiam); and *Taylor v. Chiang* (*Taylor IV*), 405 Fed.Appx. 167 (9th

challenge the constitutionality of California's Unclaimed Property Law ("UPL"), which provides for the conditional transfer of unclaimed property to the State of California.[2] While this Court has previously held the UPL facially constitutional, *see Taylor III,* 525 F.3d at 1289, the instant suit challenges the California State Controller Betty Yee's ("the Controller") application of the statute.[3] Appellants claim that the procedures used both before unclaimed property is transferred to the Controller ("pre-escheat") and after it is transferred ("post-escheat") violate Appellants' due process rights. The

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Cir.2010). In addition, this Court has decided four appeals in a related case brought by Appellants' counsel: *Suever v. Connell* (*Suever I*), 439 F.3d 1142 (9th Cir.2006); *Suever v. Connell* (*Suever II*), 579 F.3d 1047 (9th Cir.2009); *Suever v. Connell* (*Suever III*), 484 Fed.Appx. 187 (9th Cir.2012); and *Suever v. Connell* (*Suever IV*), —— U.S. ——, 133 S.Ct. 1243, 185 L.Ed.2d 178 (2013).

[2] The UPL is California's escheatment statute. "Escheat is ... a means of dealing with ... money and property [that] are unclaimed and the person entitled to it is dead or ... cannot be found and there is no other individual with a good claim." *Taylor I,* 402 F.3d at 926. Essentially, property that is unclaimed, as defined by the UPL, is transferred (escheats) to California. However, an owner may reclaim property escheated pursuant to the UPL at any time; thus the property "does not permanently escheat to the state." Cal.Civ.Proc.Code § 1501.5(a). If California sells the property, the owner may recover the proceeds. The State may destroy property that has no commercial value.

[3] Appellee Betty Yee is the California State Controller and Appellee Richard Chivaro is the Chief Counsel to the State Controller.

district court dismissed Appellants' suit with prejudice for failure to state a claim. We **AFFIRM**.

Appellants' first and primary argument is that the pre-escheat notice provided by the Controller is constitutionally inadequate because the Controller does not attempt to locate property owners using the data sources required by Section 1531.5 of the UPL. Appellants further argue that the Controller's pre-escheat notice process is inadequate because it is carried out by companies that have an alleged conflict of interest because they receive a portion of the escheated property's value. Finally, Appellants argue that the Controller's post-escheat procedures violate the Due Process and Takings Clauses because they do not provide an adequate remedy when the Controller denies an individual's claim to escheated property.

II. BACKGROUND

As explained below in more detail, under the UPL, property that appears to be lost or abandoned by the owner is conditionally transferred to the State if it remains unclaimed after notice is provided to the owner. Examples of such lost or abandoned property are savings accounts at a bank or shares of stock held in a brokerage account. In August of 2007, in response to *Taylor II,* which found the UPL's notice requirements insufficient, the California Legislature amended the UPL to provide additional notice to owners of unclaimed property. In *Taylor III*, this Court determined that the amended UPL is

facially constitutional. Appellants now bring this as-applied challenge to the law.

California's Unclaimed Property Law

According to the Controller, the purpose of the UPL is to locate owners of apparently lost or abandoned property and restore their property to them; but if these efforts are unsuccessful, to give the benefit of any unclaimed property to California, rather than to financial institutions or other private entities holding the property ("holders"). As the Controller explains, the UPL thus ensures that unless and until the owner reclaims it, unclaimed property will be used for the public good rather than for the benefit of private banks and financial institutions.

Pursuant to the UPL, holders must transfer property to the State once the property meets the UPL's definition of unclaimed property. *See* Cal.Civ.Proc.Code § 1511 *et seq.* However, prior to escheatment to California, the UPL requires that multiple forms of notice be given to the apparent owners of unclaimed property, including two notice letters.

As an initial step, the UPL provides that the holder "shall make reasonable efforts to notify any owner by mail or, if the owner has consented to electronic notice, electronically, that the owner's" property will escheat to the State. *Id.* §§ 1513.5(d), 1514(b), 1516(d). The same general notice

requirements apply to all types of property under the UPL, although the specifics vary by property type. *Compare id.* § 1514 (safe deposit boxes), *with* § 1516 (business dividends and distributions). This notice is sent to the apparent owner's address, as reflected in the holder's records. The notice contains a form that the owner is to complete, sign, and return, in which case, "it shall be deemed that the [holder] knows the location of the owner," who claims the property. *E.g., id* § 1531.5(d). The holder may also provide telephonic or electronic methods by which the owner can claim the property. *Id.*

If the owner does not respond to the holder's notice, the property is deemed unclaimed and the holder must report to the Controller "the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of at least fifty dollars ($50) escheated under this chapter." *Id.* § 1530(b)(1). The statute mandates specific dates, depending on the property's classification, by which a holder must report the unclaimed property to the Controller. *Id.* § 1530(d). The holder's notice to the owner is to be given "[n]ot less than 6 nor more than 12 months before the time the account, deposit, shares, or other interest becomes reportable to the Controller in accordance with this chapter." *Id.* § 1513.5.

After the holder has reported the unclaimed property to the Controller, but before it is transferred, that is, pre-escheat, "the Controller

shall mail a notice to each person having an address listed in the report who appears to be entitled to property of the value of fifty dollars ($50) or more escheated under this chapter." *Id.* § 1531(d).[4] The Controller's notice must state that property is being held, name the addressee who may be entitled to it, and give the name and address of the holder. *Id.* § 1531(e). Further, the notice must provide:

> [a] statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the notice, the property will be placed in the custody of the Controller and may be sold or destroyed pursuant to this chapter, and all further claims concerning the property or, if sold, the net proceeds of its sale, must be directed to the Controller.
>
> *Id.* § 1531(e)(3). Usually, the Controller's notice is mailed to the owner's address provided by the holder.

The Controller takes an additional step to determine the current address of the owner. Under the UPL, if the holder's report includes the owner's

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[4] By design of the statute, the Controller's notice occurs prior to escheatment because it must be sent "[w]ithin 165 days after the final date" on which the holder submits its report to the Controller, whereas the holder is to deliver the unclaimed property "no sooner than seven months [i.e., 210 days] and no later than seven months and 15 days after the final date for filing the report." *See id.* §§ 1531(d), 1532.

Social Security number, "the Controller shall request the Franchise Tax Board to provide a current address for the apparent owner on the basis of that number." *Id.* § 1531(d). If the Franchise Tax Board provides an address different from the one provided by the holder, the Controller sends notice to that address. *Id.* Otherwise, if the Franchise Tax Board does not provide any address, or provides the same address as the holder, the Controller mails notice to the address provided by the holder. *Id.*

If the owner fails to timely "establish[ ] his or her right to receive any property specified in the report to the satisfaction of the holder before that property has been delivered to the Controller" then the property must be transferred (that is, escheated) to the Controller in the time specified by the statute. *Id.* § 1532(a)-(b). However, the property transferred to the Controller does not "permanently escheat to the state." *Id.* § 1501.5(a). Rather, the Controller holds the unclaimed property in trust for the owner who may claim it at any time. Those who "claim[ ] to have been the owner ... of property paid or delivered to the Controller under this chapter may file a claim to the property or to the net proceeds from its sale." *Id.* § 1540(a).

Beyond the notice mailed by the Controller, the UPL requires additional forms of notice. The Controller must also provide notice via publication "in a newspaper of general circulation which the Controller determines is most likely to give notice to the apparent owner of the property." *Id.* § 1531(a).

The newspaper notice does not state which property was taken or from whom, but instead explains generally that the Controller takes custody of unclaimed property. The advertisement states that "California may have received Property belonging to You" and explains that property is deemed unclaimed if there has been no owner contact with the property holder or account activity for three years.

The newspaper notice also informs potential owners of the Controller's website where they may perform a search to determine whether they may be the owner of unclaimed property. If there is property in that person's name, the website further describes what the property is, what it is worth, which holder reported it, and the owner's name and address as reported by the holder. The website provides instructions for filling out a claim form, which can be done online.

In *Taylor III*, this Court explained that the UPL, as amended in 2007, passes constitutional muster because the *State,* in addition to the holder, "is required to provide pre-escheat 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' " 525 F.3d at 1289 (quoting *Jones v. Flowers,* 547 U.S. 220, 226, 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006)). The UPL declares, "[i]t is the intent of the Legislature that property owners be reunited with their property" and that in amending

the law, California intended to provide "[n]otification by the state to all owners of unclaimed property *prior* to escheatment." Cal.Civ.Proc.Code § 1501.5(c)(1) (emphasis added). The amended UPL came about as a result of this Court's decision in *Taylor II*.

Taylor I, II, and III

In *Taylor I*, two individuals[5] sued after the Controller escheated purportedly unclaimed shares of stock that the individuals owned. *Taylor I,* 402 F.3d at 926. The issue then was whether the notice provided to plaintiffs was constitutionally adequate. The district court dismissed the complaint under the Eleventh Amendment for lack of jurisdiction. This Court reversed. *Id.* at 936. We ruled that the suit was not barred by the Eleventh Amendment because plaintiffs' action was for return of their own properties. *See id.*

After remand, plaintiffs, challenging the adequacy of the notice provided prior to escheat of the unclaimed property to the Controller, moved for a preliminary injunction. In response, the Controller argued the UPL provided constitutionally adequate notice by requiring that: 1) the Controller place advertisements in the newspaper explaining that owners could check an unclaimed property website to see if their names or property were listed as

[5] The suit "was filed as a class action, but never reached the point of class certification *vel non*." *Taylor I,* 402 F.3d at 925.

escheated to the State; 2) the Controller "mails written notice to some, but not all, individuals whose property has been escheated"; and 3) the holders of the property subject to escheat "provide notice to individuals" prior to the property being escheated. *Taylor II,* 488 F.3d at 1201.

The district court denied plaintiffs' request for a preliminary injunction and this Court again reversed, noting that California needed to take action to "remedy the constitutional problem with its escheat statute," specifically, the lack of adequate notice. *Id.* at 1202. We explained, "[b]efore the government may disturb a person's ownership of his property, 'due process requires the government to provide notice reasonably calculated, under all the circumstances, to apprise the interested party of the pendency of the action and afford him an opportunity to present his objections.' " *Id.* at 1201 (quoting *Jones,* 547 U.S. at 226, 126 S.Ct. 1708).

In reversing the district court's denial of the injunction, this Court ruled that the plaintiffs had a strong likelihood of success in proving that the notice provisions of the UPL did not provide due process. *Id.* First, we held that the website and the Controller's mailings (which only went to some individuals) "[did] not respond to the requirement that notice be given *before* an individual's control of his property is disturbed," (i.e. escheated). *Id.* Further, "mere publication is not constitutionally adequate." *Id.* Finally, the *holder's* obligation to provide notice did not satisfy the obligation of the

State itself to give notice. *Id.* As a result, this Court ruled that a preliminary injunction should have been granted. *Id.* at 1202.

On remand, the district court issued the preliminary injunction. *Taylor v. Chiang,* No. CIV. S–01–2407 WBS GGH, 2007 WL 1628050 (E.D.Cal. June 1, 2007). The injunction enjoined the Controller from receiving, taking title to, possessing, selling, or destroying any property pursuant to the UPL "until the Controller has first promulgated regulations providing for fair notice to the owner and public, satisfactory to and approved by this court." *Id.* at *5.

As a result of *Taylor II*, in 2007 the California Legislature "eliminated the statutory and administrative procedure that [this Court] had determined to be unconstitutional" and "promulgated an entirely new statutory procedure addressing escheat." *Taylor III,* 525 F.3d at 1289. In light of the revised UPL, the district court dissolved the injunction. *Taylor v. Chiang,* No. Civ. S–01–2407 WBS GGH, 2007 WL 3049645 (E.D.Cal. Oct. 18, 2007). The district court ruled that the notice provision of the amended UPL remedied the constitutional problems identified by *Taylor II* because it required the *Controller* to send notice *before* an individual's property is transferred to the State and maintain a searchable unclaimed property website. *Id.* at *3.

Appellants appealed the dissolution of the injunction, which resulted in *Taylor III.* There, this

Court ruled that "[o]n its face, the new procedure complies with the due process standard established by the Supreme Court in *Mullane v. Cent. Hanover Bank & Trust Co.,* 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), and *Jones v. Flowers,* 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006)." *Taylor III,* 525 F.3d at 1289. Appellants could not prevail on a facial challenge because "[u]nder the new law, the Controller is required to provide pre-escheatment notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* (citations and quotation marks omitted). Therefore, it is clear that this Court has held that the UPL, on its face, provides for constitutionally adequate notice. This Court reiterated the facial constitutionality of the UPL in *Suever II,* 579 F.3d at 1054 n. 4, stating:

> In *Taylor v. Westly* (*Taylor III*), 525 F.3d 1288 (9th Cir.2008) (per curiam), we held that the "entirely new statutory procedure addressing escheat" promulgated by the State following the issuance of the preliminary injunction in *Taylor II* is facially constitutional, and that, as a result, the district court did not abuse its discretion in dissolving the injunction. *Id.* at 1289–90.

As a result of *Taylor III*, Appellants' ostensibly last hope is to craft an as-applied

challenge to the UPL, which they have done in their Second Amended Class Action Complaint.

Appellants' Second Amended Class Action Complaint

Appellants' Second Amended Class Action Complaint alleges that the Controller is administering the UPL in a manner that violates Appellants' due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. The district court dismissed all counts for failure to state a claim.

Here, the primary issue to be resolved is whether Appellants have sufficiently stated an as-applied claim that the Controller is not providing constitutionally adequate notice because she is not taking additional steps to locate and notify property owners.

III. STANDARD OF REVIEW

We review *de novo* the district court's order granting Appellees' motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *Zadrozny v. Bank of N.Y. Mellon,* 720 F.3d 1163, 1167 (9th Cir.2013). "Dismissal is proper only where there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory." *Navarro v. Block,* 250 F.3d 729, 732 (9th Cir.2001). To survive a motion to dismiss, the complaint must

allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). The Court must "accept all factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party." *Rowe v. Educ. Credit Mgmt. Corp.,* 559 F.3d 1028, 1029–30 (9th Cir.2009) (citation and quotation omitted). The Court "can affirm a 12(b)(6) dismissal on any ground supported by the record, even if the district court did not rely on the ground." *Davis v. HSBC Bank Nevada, N.A.,* 691 F.3d 1152, 1159 (9th Cir.2012) (citation and quotation omitted).

IV. ANALYSIS

A. Appellants' Claim of Inadequate Notice

Since *Taylor I,* Appellants have continuously argued that under the UPL the Controller is not providing notice in compliance with the Due Process Clause.

The Supreme Court announced that where persons may be deprived of their property, the Due Process Clause requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane,* 339 U.S. at 314, 70 S.Ct. 652.

A second, more recent, Supreme Court opinion further defined the law regarding adequate notice, explaining that "[b]efore a State may take property and sell it for unpaid taxes, the Due Process Clause of the Fourteenth Amendment requires the government to provide the owner 'notice and opportunity for hearing appropriate to the nature of the case.' " *Jones,* 547 U.S. at 223, 126 S.Ct. 1708 (quoting *Mullane,* 339 U.S. at 313, 70 S.Ct. 652).

In *Jones,* the petitioner purchased a house and lived there with his wife for more than twenty-five years before they separated. *Id.* After the separation, the petitioner moved out, but continued to pay the mortgage each month, and the mortgage company paid the property taxes. *Id.* However, once the mortgage was paid, the property taxes were unpaid and delinquent. *Id.* Arkansas' Commissioner of State Lands notified the petitioner of the tax delinquency by mailing a certified letter to the petitioner at the property's address. *Id.* This letter "stated that unless [the petitioner] redeemed the property, it would be subject to public sale two years later." *Id.* However, nobody was home to sign for the letter and nobody appeared at the post office to claim the letter. *Id.* at 224, 126 S.Ct. 1708. Therefore, the letter was returned to the Commissioner as unclaimed. *Id.*

Just weeks before the public sale of the property, the Commissioner published a notice of the sale in a local newspaper. *Id.* After the sale of the property was negotiated with a third party, the

Commissioner sent another certified letter to the petitioner in an attempt to notify the petitioner that his home was going to be sold if he did not pay the delinquent taxes. *Id.* Just as the first notice, this second letter was returned to the Commissioner as unclaimed. *Id.*

Ultimately, the property was sold and the buyer "had an unlawful detainer notice delivered to the property. The notice was served on [the petitioner's] daughter, who contacted [the petitioner] and notified him of the tax sale." *Id.* The petitioner filed suit, arguing that the Commissioner failed to provide constitutionally adequate notice of the tax sale. *Id.*

Jones required the Court to determine "whether due process entails further responsibility when the government becomes aware prior to the taking that its attempt at notice has failed." *Id.* at 226, 126 S.Ct. 1708. This is because the Court had previously "explained that the 'notice required will vary with circumstances and conditions.' " *Id.* at 227, 126 S.Ct. 1708 (quoting *Walker v. City of Hutchinson,* 352 U.S. 112, 115, 77 S.Ct. 200, 1 L.Ed.2d 178 (1956)). Stated another way, the issue was whether the government's knowledge that the notice had not been received was a "circumstance and condition that varies the notice required." *Id.* (quotation omitted).

The Supreme Court held "that when mailed notice of a tax sale is returned unclaimed, the State

must take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so." *Id.* at 225, 126 S.Ct. 1708.

The Court found there were "several reasonable steps the State could have taken," and that "[w]hat steps are reasonable in response to new information depends upon what the new information reveals." *Id.* The certified mail was marked as unclaimed, which could have meant that the petitioner still lived at the address, but was not home or that the petitioner no longer lived at the address. *Id.* One reasonable step would have been for the State to "resend notice by regular mail, so that a signature was not required." *Id.* This would "increase the chances of actual notice to [the petitioner] if—as it turned out—he had moved." *Id.* at 235, 126 S.Ct. 1708. Relevant to Appellants' case, the petitioner in *Jones* argued "that the Commissioner should have searched for his new address in the Little Rock phonebook and other government records such as income tax rolls." *Id.* at 235–36, 126 S.Ct. 1708. However, the Court declared that it "[did] not believe the government was required to go this far." *Id.*[6]

[6] It is important to note that in *Jones* the Court was concerned with the "important and irreversible prospect" of "the loss of a house." *Id.* at 230, 126 S.Ct. 1708. Indeed the Court cited to a number of federal appellate and state supreme court cases addressing notice in the context of selling real property to a third party at a tax sale. *Id.* at 227, 126 S.Ct. 1708. In stark contrast, the property conditionally transferred

Appellants rely on *Jones* for their proposition that the Controller must also "consult 'all' publicly available databases" to locate the owners of unclaimed property. Specifically, Appellants claim that the Controller is violating the Due Process Clause because he is failing to utilize Section 1531.5 of the UPL. Section 1531.5 provides that "[t]he Controller shall establish and conduct a notification program designed to inform owners about the possible existence of unclaimed property *received* pursuant to" the UPL. Cal.Civ.Proc.Code § 1531.5(a) (emphasis added). It permits California's state and local governmental agencies, "upon the request of the Controller," to provide the Controller with information from their databases that could be used post-escheat to locate owners of unclaimed property. *Id.* § 1531.5(c)(1). Appellants maintain that the Controller's failure to utilize the additional data available through Section 1531.5 violates Appellants' due process rights. This interpretation is incorrect.

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to the Controller pursuant to the UPL does not permanently escheat to the State and may be claimed at any time. Cal.Civ.Proc.Code § 1501.5(a). That said, owners that belatedly step forward to reclaim their property may be able to obtain only the sale proceeds. In such a case, the Controller then holds the proceeds in trust until the owner steps forward to claim the property. Further, if the property "has no apparent commercial value" the Controller must retain the property "for a period of not less than seven years from the date the property is delivered to the Controller ... [and] may at any time thereafter destroy or otherwise dispose of the property...." *Id.* § 1565.

B. Appellants Incorrectly Interpret Section 1531.5

This Court has already ruled that the UPL passes muster under the *Mullane–Jones* standard. However, Appellants contend that in ruling the UPL constitutional, this Court relied upon Section 1531.5. Under Appellants' interpretation of the law, when generating the pre-escheat notices, the Controller is required to utilize Section 1531.5 and search additional databases in an attempt to locate property owners.

Contrary to Appellants' position, it appears this Court did not rely on Section 1531.5, which applies *post*-escheat, in determining the facial constitutionality of the revised UPL. Indeed, the only reference to Section 1531.5 found in *Taylor III* was in a citation where the Court mentioned California had overhauled its escheat law.[7] *Taylor III,* 525 F.3d

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[7] In *Taylor III,* this Court provided a brief history of the case stating,

> After the plaintiff had won these two victories on appeal, the district court issued a preliminary injunction pursuant to our mandate. The State then eliminated the statutory and administrative procedure that we had determined to be unconstitutional. The State promulgated an entirely new statutory procedure addressing escheat. *See* Cal.Civ.Proc.Code § 1501.5(c) (West 2008); *see also id.* at §§ 1531, 1531.5, 1532, 1563, 1565. Concluding that the amendments remedied the constitutional defects we identified in *Taylor II*, the district court granted the Controller's motion to dissolve the injunction.

Taylor III, 525 F.3d at 1289. This is the only mention of Section 1531.5 in the opinion.

at 1289. Rather, it was the requirement that the Controller provide reasonable *pre*-escheat notice that brought the UPL into constitutional compliance, as this Court stated:

> On its face, the new procedure complies with the due process standard established by the Supreme Court in *Mullane v. Cent. Hanover Bank & Trust Co.,* 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), and *Jones v. Flowers,* 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006). Under the new law, the Controller is required to provide *pre*-escheat " 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections,' " *Flowers,* 547 U.S. at 226, 126 S.Ct. 1708 (quoting *Mullane,* 339 U.S. at 314, 70 S.Ct. 652). Thus, the plaintiffs' challenge, to the extent that it is a facial challenge against the new law, fails.

Id. (emphasis added). That Section 1531.5 relates only to *post*-escheatment procedures is clear from the language of that section, titled "Notification program for possible owners of escheated property," which states "[t]he Controller shall establish and conduct a notification program designed to inform owners about the possible existence of unclaimed property *received* pursuant to this chapter." Cal.Civ.Proc.Code § 1531.5(a)

> (emphasis added).[8] Therefore, Section 1531.5 does not mandate that the Controller seek access to additional databases to locate property owners to provide *pre*-escheat notice.

Tellingly, when appealing the dissolution of the injunction, Appellants argued that the amended provisions of the UPL did not satisfy the *Mullane–Jones* standard because the additional information available under Section 1531.5 was not available until *after* the property is received by the Controller. Appellees correctly note that this Court's focus in *Taylor II* and *Taylor III* was on notice being provided by the Controller *before* the property was transferred to the State, that is, escheated, and therefore Section 1531.5 could not have been a deciding factor for the Court in *Taylor III*, as Appellants argue.

Furthermore, Section 1531.5 is permissive in that it allows state and local agencies to furnish records "upon the request of the Controller," but it does not mandate that the Controller request such records. Cal.Civ.Proc.Code § 1531.5(c)(1). It seems clear that the purpose of this provision is to permit the agencies to disclose personal information that would be non-disclosable in the absence of this statutory waiver. Rather than a mandate that the Controller use the agencies' databases, Section 1531.5 provides legal cover for the agencies'

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[8] Moreover, at oral argument Appellants' counsel conceded that Section 1531.5 does not apply pre-escheat.

disclosure of such personal information should the Controller opt to request it.

Therefore, Appellants' argument that the Controller does not meet the *Mullane–Jones* standard because she fails to utilize data made available by Section 1531.5 is without merit as it is based upon a misinterpretation of the statute. Moreover, in trying to provide pre-escheat notice to owners of unclaimed property, the Controller does take "additional reasonable steps to notify [the owners], if practicable to do so." *Jones,* 547 U.S. at 234, 126 S.Ct. 1708. If provided with a Social Security number, the Controller utilizes the Franchise Tax Board's database to determine if there is a more current address. The Controller also provides notice in the newspaper to explain to the public generally that it is holding properties that may belong to the readers. Finally, the Controller maintains a searchable website where individuals can determine whether they are the owners of unclaimed property, and if so, can submit a claim form.

Appellants' suggested requirement that the Controller utilize additional governmental databases may, of course, lead to more claims being filed, but it exceeds the minimum due process requirements. Indeed, as indicated above, the property owner in *Jones* argued that Arkansas' Commissioner of State Lands "should have searched for [his] new address in the Little Rock phonebook and other government records such as income tax rolls." *Id.* at 235–36, 126

S.Ct. 1708. However, the Supreme Court "[did] not believe the government was required to go this far." *Id.* at 236, 126 S.Ct. 1708. Likewise here, the Controller is not required, either by the Due Process Clause or Section 1531.5, to go as far as Appellants suggest.[9]

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[9] Appellants take issue with the Controller's use of the Franchise Tax Board database, arguing that

> [b]y using *only* the FTB database to notify owners of unclaimed property before their property is seized, the Controller purposely and by design fails to find current addresses of millions of Californians and other citizens who moved, permanently reside out-of-state, and may never even have set foot in California, but have deposited their earnings in bank accounts, bought securities, opened safety deposit boxes and otherwise invested and safeguarded their properties by depositing said assets with banks, corporations, and financial institutions that [have] offices in California.

(Sec.Am.Compl.¶ 70). Yet, when ruling the law constitutional, this Court was obviously aware that in sending pre-escheat notices, the Controller would utilize the last known address provided by the holders or alternative addresses from the FTB database. Moreover, Appellants' argument undercuts their other argument that the Controller should be utilizing other databases, such as California's Department of Motor Vehicles, to locate property owners. Those who simply maintained their assets in California banks and permanently reside out-of-state, such as Plaintiff Chris Lusby Taylor, likely do not have California driver's licenses and would therefore likely not appear in a California DMV database.

C. Appellants' Additional Arguments

The Court also rejects Appellants' additional argument related to the Controller's use of related companies to administer the UPL. This argument is not supported by law or the alleged facts. The cases cited by Appellants are inapposite because here, the allegedly biased companies are not decision-makers and instead merely perform ministerial duties. Furthermore, Appellants do not sufficiently allege that the companies have failed to carry out the UPL's notice procedures.

Appellants' challenge to the Controller's post-escheat procedure is not ripe because the Appellants failed to challenge the Controller's action—or inaction—in superior court as required by Section 1541 and Appellants do not appeal the district court's determination that the post-escheat procedure provided by the UPL is reasonable. *See Suitum v. Tahoe Reg'l Planning Agency,* 520 U.S. 725, 734, 117 S.Ct. 1659, 137 L.Ed.2d 980 (1997) (citing *Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City,* 473 U.S. 172, 195, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985); *Carson Harbor Village, Ltd. v. City of Carson,* 353 F.3d 824, 826 (9th Cir.2004) (citing *Williamson,* 473 U.S. at 186, 105 S.Ct. 3108)).[10]

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[10] Even if adequately raised, Appellants' argument regarding the Controller's post-escheat procedure is without merit. The UPL provides that within ninety days after the Controller's denial of a claim, an individual aggrieved by the

V. CONCLUSION

For these reasons, this Court **AFFIRMS** the district court's ruling.

Controller's decision may seek review in state court. *See* Cal.Civ.Proc.Code § 1541. The ninety day limitation is not inherently unreasonable. Indeed, ninety days is the same period in which a plaintiff must bring suit for discrimination under Title VII after the EEOC has issued its right to sue letter. *See* 42 U.S.C. § 2000e–5(f)(1). Moreover, any claim that the limitation period is unconstitutional is foreclosed by our prior decision holding the UPL facially constitutional. *See Taylor III,* 525 F.3d at 1289.

APPENDIX B

United States District Court
Eastern District of California

Chris Lusby TAYLOR, et al., Plaintiffs,

v.

John CHIANG, individually and in his capacity as State Controller of the State of California; Richard Chivaro, individually, Defendants

No. CIV. S-01-2407

November 14, 2012

Before the Honorable John A. Mendez.

Plaintiffs' Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) came on for hearing on October 3, 2012, at 9:30 a.m. in Courtroom 6 of the United States district Court, Eastern District, the Honorable John A. Mendez, presiding. Plaintiffs Chris Lusby Taylor, et al. appeared by and through their counsel, Robert A. Buccola, C. Brooks Cutter, Lori M. Porter, and William W. Palmer. Defendants John Chaing, et al. appeared by and through their counsel, Robin B. Johansen and Margaret R. Prinzing of Remcho, Johansen & Purcell, LLP.

The Court, having reviewed the record, having read and considered the supporting and opposing points and authorities, and having heard and considered the arguments of counsel, and good cause appearing, finds and orders that Defendants' Motion to Dismiss is GRANTED.

IT IS HEREBY ORDERED THAT:

1. Plaintiffs' First Claim is dismissed without leave to amend on the grounds that:

(a) the Due Process Clause of the United States Constitution does not require the Controller to search through multiple government databases to find addresses for owners of unclaimed property to use for pre-or post-escheat direct mail notice or when the Controller's pre-escheat direct mail notice is returned unopened;

(b) the Due Process Clause of the United States Constitution does not require the State of California to provide a minimum level of funding or minimum staffing level for the Controller's Locator Unit;

(c) an alleged pecuniary interest on the part of a private corporation that has contracted with the Controller's Office to design an automated notice system does not state a claim for a violation of the Due Process Clause of the United States Constitution;

(d) the Due Process Clause of the United States Constitution does not require the Controller to provide more notice to the apparent owners of unclaimed property valued at less than $50 than the notice he provides to such owners.

2. Plaintiffs Second Claim is dismissed without leave to amend on the grounds that:

(a) the Due Process Clause of the United States Constitution does not require the Contorller to search through multiple government databases to find addresses for owners of unclaimed property to use for pre- or post-escheat direct mail notice or when the Controller's pre-escheat direct mail notice is returned unopened;

(b) the Due Process Clause of the United States Constitution does not require the State of California to provide a minimum level of funding or minimum staffing level for the Controller's Locator Unit;

(c) an alleged pecuniary interest on the part of a private corporation that has contracted with the Controller's Office to design an automated notice system does not state a claim for a violation of the Due Process Clause of the United States Constitution; and

(d) the Due Process Clause of the United States Constitution does not require the Controller to provide more notice to the apparent owners of

unclaimed property valued at less than $50 than the notice he provides to such owners.

3. Plaintiffs Third Claim is dismissed without leave to amend on the grounds that:

(a) plaintiffs have failed to state a claim for a violation of any right under the Due Process Clause of the United States Constitution based on the Controller's alleged failure to provide post-escheat remedies other than those provided by section 1540 of the Code of Civil Procedure;

(b) plaintiffs have no federal right to a jury trial in civil cases in state court;

(c) plaintiffs have no federal right to a minimum state of limitations to bring suit in state court; and

(d) the Eleventh Amendment of the United States Constitution bars claims based on the defendants' alleged failure to comply with state law.

4. Plaintiffs Fourth Claim is dismissed without leave to amend on the ground that the Eleventh Amendment of the United States Constitution bars claims that are based on the defendants' alleged failure to comply with state law.

5. Plaintiffs' Fifth Claim is dismissed without leave to amend on the ground that plaintiffs have failed to allege that the Controller provides less

notice than that which is required by the United States Constitution, for the following reasons:

(a) the Due Process Clause of the United States Constitution does not require the Controller to search through multiple government databases to find addresses for owners of unclaimed property to use for pre- or post-escheat direct mail notice or when the Controller's pre-escheat direct mail notice is returned unopened;

(b) the Due Process Clause of the United States Constitution does not require the State of California to provide a minimum level of funding or minimum staffing level for the Controller's Locator Unit;

(c) the Due Process Clause of the United States Constitution does not require the Controller to provide more notice to the apparent owners of unclaimed property valued at less than $50 than the notice he provides to such owners;

(e) the due Process Clause of the United States Constitution does not require the Controller to publish the names of the apparent owners of unclaimed property in the newspaper notices required by the UPL;

(f) the Due Process Clause of the United States Constitution does not require the Controller to provide additional notice to unclaimed property owners who are foreign nationals;

(g) plaintiffs have failed to state a claim for a violation of any right under the Due Process Clause of the United States Constitution based on the Controller's alleged failure to provide post-escheat remedies other than those provided by section 1540 of the Code of Civil Procedure.

6. Plaintiffs' Sixth Claim is dismissed without leave to amend on the ground that the Eleventh Amendment of the United States Constitution bars claims that are based on the defendants' alleged failure to comply with state law and prohibits plaintiffs from seeking damages in the form of restitution from the State.

7. Plaintiffs Seventh Claim is dismissed without leave to amend on the grounds that:

(a) *Taylor v. Westly*, 402 F.3d 924 (9th Cir. 2005) ("*Taylor I*") and *Suever v. Chiang*, 579 F.3d 1047 (9th Cir. 2009) ("*Suever II*") foreclose the claim that the transfer and/or sale of property under the UPL violate the Fifth Amendment of the United States Constitution; and

(b) the State does not owe compensation to the owners of unclaimed property of no commercial value that is destroyed pursuant to the provisions of the UPL, which were upheld in *Taylor v. Westly*, 525 F.3d 1288 (9th Cir. 2008) ("*Taylor III*").

8. Plaintiffs Eighth Claim is dismissed without leave to amend on the ground that the

Eleventh Amendment of the United States Constitution bars claims that are based on the defendants' alleged failure to comply with state law.

9. Plaintiffs' Ninth Claim is dismissed without leave to amend on the ground that plaintiffs have failed to state a claim under the Contracts Clause of the United States Constitution.

10. Plaintiffs Tenth Claim is dismissed without leave to amend on the ground that the Eleventh Amendment of the United States Constitution bars claims that are based on the defendants' alleged failure to comply with state law.

11. Plaintiffs' Eleventh Claim is dismissed without leave to amend on the grounds that:

(a) the federal securities laws do not preempt the UPL; and

(b) the UPL does not interfere with rights protected by the federal securities laws.

12. Plaintiffs Twelfth Claim is dismissed without leave to amend on the ground that the Eleventh Amendment of the United States Constitution bars claims that are based on the defendants' alleged failure to comply with state law.

13. Plaintiffs' Thirteenth Claim is dismissed without leave to amend on the grounds that:

(a) the Due Process Clause of the United States Constitution does not require the Controller to search through multiple government databases to find addresses for owners of unclaimed property to use for pre-or post-escheat direct mail notice or when the Controller's pre-escheat direct mail notice is returned unopened;

(b) plaintiffs have failed to state a claim for a violation of any right under the Due Process Clause of the United States Constitution or 42 U.S.C. section 1983 based on the Controller's alleged failure to take additional steps to provide notice to the apparent owners of unclaimed property;

(c) plaintiffs have failed to state a claim for a violation of any right under the Due Process Clause of the United States Constitution or 42 U.S.C. section 1983 based on the Controller's alleged failure to provide post-escheat remedies other than those provided by section 1540 of the Code of Civil Procedure;

(d) plaintiffs have failed to state a claim for a violation of 42 U.S.C. section 1983 for taking property from owners of unclaimed property without just compensation;

(e) plaintiffs have failed to state a claim for a violation of any right under the Fifth Amendment or Due Process Clause of the United States Constitution, or the Civil Rights Act of 1871, based on the Controller's alleged use of outside auditors;

(f) plaintiffs have failed to state a claim for a violation of any right under the Contracts Clause of the United States Constitution; and

(g) plaintiffs have failed to state a claim for a violation of any right under the Fifth Amendment or Due Process Clause of the United States Constitution based on an alleged pecuniary interest on the part of the private corporation that has contracted with the Controller's Office to design an automated notice system.

14. Plaintiffs' Fourteenth Claim is dismissed without leave to amend on the ground that plaintiffs have won no relief entitling them to attorneys' fees or the creation of a common fund.

IT IS SO ORDERED.

Dated 11-14-2012 The Honorable John Mendez

APPENDIX C

United States Court Of Appeals
For The Ninth Circuit

Chris Lusby TAYLOR, et al., Plaintiffs – Appellants,

v.

Betty YEE, individually and in her official capacity as State Controller of the State of California; Richard Chivaro, Defendants – Appellees

No. 12-17828

May 7, 2015

Before SCHROEDER and SILVERMAN, Circuit Judges and HUCK, Senior District Judge.

The panel has voted to deny appellants' petition for rehearing. Judge Silverman has voted to reject appellants' petition for rehearing en banc and Judges Schroeder and Huck so recommend.
The full court has been advised of the petition for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.
The petition for rehearing and the petition for rehearing en banc are **DENIED**.

APPENDIX D

Code of Civil Procedure

Title 10, Chapter 7

Unclaimed Property Law

§ 1510. Escheat of intangible personal property

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

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

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

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

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

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

(c) The last known address, as shown on the records of the holder, of the apparent owner is in a state that does not provide by law for the escheat of such property and the holder is (1) domiciled in this state or (2) a government or governmental subdivision or agency of this state.

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

Code of Civil Procedure

Title 10, Chapter 7

Unclaimed Property Law

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

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

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

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

(3) The business association has its principal place of business in this state, the books and records of the business association show the state in which such money order, travelers check, or similar written instrument was purchased, and the laws of the state

of purchase do not provide for the escheat of the sum payable on such instrument.

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

Code of Civil Procedure

Title 10, Chapter 7

Unclaimed Property Law

§ 1513. Notice of escheat by banking or financial organization

(a) Subject to Sections 1510 and 1511, the following property held or owing by a business association escheats to this state:

(1)(A) Except as provided in paragraph (6), any demand, savings, or matured time deposit, or account subject to a negotiable order of withdrawal, made with a banking organization, together with any interest or dividends thereon, excluding, from demand deposits and accounts subject to a negotiable order of withdrawal only, any reasonable service charges that may lawfully be withheld and that do not (where made in this state) exceed those set forth in schedules filed by the banking organization from time to time with the Controller, when the owner, for more than three years, has not done any of the following:

(i) Increased or decreased the amount of the deposit, cashed an interest check, or presented the passbook or other similar evidence of the deposit for the crediting of interest.

(ii) Corresponded electronically or in writing with the banking organization concerning the deposit.

(iii) Otherwise indicated an interest in the deposit as evidenced by a memorandum or other record on file with the banking organization.

(B) A deposit or account shall not, however, escheat to the state if, during the previous three years, the owner has owned another deposit or account with the banking organization or the owner has owned an individual retirement account or funds held by the banking organization under a retirement plan for self-employed individuals or a similar account or plan established pursuant to the internal revenue laws of the United States or the laws of this state, as described in paragraph (6), and, with respect to that deposit, account, or plan, the owner has done any of the acts described in clause (i), (ii), or (iii) of subparagraph (A), and the banking organization has communicated electronically or in writing with the owner, at the address to which communications regarding that deposit, account, or plan are regularly sent, with regard to the deposit or account that would otherwise escheat under subparagraph (A). For purposes of this subparagraph, "communications" includes account statements or statements required under the internal revenue laws of the United States.

(C) No banking organization may discontinue any interest or dividends on any savings deposit because of the inactivity contemplated by this section.

(2)(A) Except as provided in paragraph (6), any demand, savings, or matured time deposit, or matured investment certificate, or account subject to a negotiable order of withdrawal, or other interest in a financial organization or any deposit made therewith, and any interest or dividends thereon, excluding, from demand deposits and accounts subject to a negotiable order of withdrawal only, any reasonable service charges that may lawfully be withheld and that do not (where made in this state) exceed those set forth in schedules filed by the financial organization from time to time with the Controller, when the owner, for more than three years, has not done any of the following:

(i) Increased or decreased the amount of the funds or deposit, cashed an interest check, or presented an appropriate record for the crediting of interest or dividends.

(ii) Corresponded electronically or in writing with the financial organization concerning the funds or deposit.

(iii) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum or other record on file with the financial organization.

(B) A deposit or account shall not, however, escheat to the state if, during the previous three years, the owner has owned another deposit or account with the financial organization or the owner has owned an individual retirement account or funds held by

the financial organization under a retirement plan for self-employed individuals or a similar account or plan established pursuant to the internal revenue laws of the United States or the laws of this state, as described in paragraph (6), and, with respect to that deposit, account, or plan, the owner has done any of the acts described in clause (i), (ii), or (iii) of subparagraph (A), and the financial organization has communicated electronically or in writing with the owner, at the address to which communications regarding that deposit, account, or plan are regularly sent, with regard to the deposit or account that would otherwise escheat under subparagraph (A). For purposes of this subparagraph, "communications" includes account statements or statements required under the internal revenue laws of the United States.

(C) No financial organization may discontinue any interest or dividends on any funds paid toward purchase of shares or other interest, or on any deposit, because of the inactivity contemplated by this section.

(3) Any sum payable on a traveler's check issued by a business association that has been outstanding for more than 15 years from the date of its issuance, when the owner, for more than 15 years, has not corresponded in writing with the business association concerning it, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the association.

(4) Any sum payable on any other written instrument on which a banking or financial organization is directly liable, including, by way of illustration but not of limitation, any draft, cashier's check, teller's check, or certified check, that has been outstanding for more than three years from the date it was payable, or from the date of its issuance if payable on demand, when the owner, for more than three years, has not corresponded electronically or in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the banking or financial organization.

(5) Any sum payable on a money order issued by a business association (including a banking or financial organization), that has been outstanding for more than seven years from the date it was payable, or from the date of its issuance if payable on demand, excluding any reasonable service charges that may lawfully be withheld and that do not, when made in this state, exceed those set forth in schedules filed by the business association from time to time with the Controller, when the owner, for more than seven years, has not corresponded electronically or in writing with the business association, banking, or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the business association. For the purposes of this subdivision, "reasonable service charge" means a service charge that meets all of the following requirements:

(A) It is uniformly applied to all of the issuer's money orders.

(B) It is clearly disclosed to the purchaser at the time of purchase and to the recipient of the money order.

(C) It does not begin to accrue until three years after the purchase date, and it stops accruing after the value of the money order escheats.

(D) It is permitted by contract between the issuer and the purchaser.

(E) It does not exceed 25 cents ($0.25) per month or the aggregate amount of twenty-one dollars ($21).

(6)(A) Any funds held by a business association in an individual retirement account or under a retirement plan for self-employed individuals or similar account or plan established pursuant to the internal revenue laws of the United States or of this state, when the owner, for more than three years after the funds become payable or distributable, has not done any of the following:

(i) Increased or decreased the principal.

(ii) Accepted payment of principal or income.

(iii) Corresponded electronically or in writing concerning the property or otherwise indicated an interest.

(B) Funds held by a business association in an individual retirement account or under a retirement plan for self-employed individuals or a similar account or plan created pursuant to the internal revenue laws of the United States or the laws of this state shall not escheat to the state if, during the previous three years, the owner has owned another such account, plan, or any other deposit or account with the business association and, with respect to that deposit, account, or plan, the owner has done any of the acts described in clause (i), (ii), or (iii) of subparagraph (A), and the business association has communicated electronically or in writing with the owner, at the address to which communications regarding that deposit, account, or plan are regularly sent, with regard to the account or plan that would otherwise escheat under subparagraph (A). For purposes of this subparagraph, "communications" includes account statements or statements required under the internal revenue laws of the United States.

(C) These funds are not payable or distributable within the meaning of this subdivision unless either of the following is true:

(i) Under the terms of the account or plan, distribution of all or a part of the funds would then be mandatory.

(ii) For an account or plan not subject to mandatory distribution requirement under the internal revenue

laws of the United States or the laws of this state, the owner has attained 70 ½ years of age.

(7) Any wages or salaries that have remained unclaimed by the owner for more than one year after the wages or salaries become payable.

(b) For purposes of this section "service charges" means service charges imposed because of the inactivity contemplated by this section.

Code of Civil Procedure

Title 10, Chapter 7

Unclaimed Property Law

§ 1513.5. Notice of escheat by banking or financial organization

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

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

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

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

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

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

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

deposit, account, shares, or other interest to the Controller.

(e) At the time a new account is opened with a banking or financial organization, the organization shall provide a written notice to the person opening the account informing the person that his or her property may be transferred to the appropriate state if no activity occurs in the account within the time period specified by state law. If the person opening the account has consented to electronic notice, that notice may be provided electronically.

Code of Civil Procedure

Title 10, Chapter 7

Unclaimed Property Law

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

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

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

association shall give notice not less than 6 months and not more than 12 months before the time the contents, or the proceeds of the sale of the contents, become reportable to the Controller in accordance with this chapter.

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

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

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

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

(4) Specify that the Unclaimed Property Law requires business associations to transfer the contents of, or the proceeds of sale of the contents of, a safe deposit box or other safekeeping repository to the Controller if they remain unclaimed for more than three years.

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

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

(e) The contents of, or the proceeds of sale of the contents of, a safe deposit box or other safekeeping

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

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

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

financial organization providing the safe deposit box or other safekeeping repository, any funds in an individual retirement account or under a retirement plan for self-employed individuals or similar account or plan pursuant to the internal revenue laws of the United States or the income tax laws of this state, which has not escheated under Section 1513 and is not reportable under subdivision (d) of Section 1530.

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

(i) For new accounts opened for a safe deposit box or other safekeeping repository with a business association on and after January 1, 2011, the business association shall provide a written notice to the person leasing the safe deposit box or safekeeping repository informing the person that his or her property, or the proceeds of sale of the property, may be transferred to the appropriate state upon running of the time period specified by state

law from the date the lease or rental period on the safe deposit box or repository expired, or from the date of termination of any agreement because of which the box or other repository was furnished to the owner without cost, whichever is earlier.

(j) A business association may directly escheat the contents of a safe deposit box or other safekeeping repository without exercising its rights under Article 2 (commencing with Section 1630) of Chapter 17 of Division 1 of the Financial Code.

Code of Civil Procedure

Title 10, Chapter 7

Unclaimed Property Law

§ 1530. Report of escheated property

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

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

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

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

(3) In the case of escheated funds of life insurance corporations, the full name of the insured or

annuitant, and his or her last known address, according to the life insurance corporation's records.

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

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

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

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

(c) If the holder is a successor to other persons who previously held the property for the owner, or if the holder has changed his or her name while holding the property, he or she shall file with his or her

report all prior known names and addresses of each holder of the property.

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

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

Code of Civil Procedure

Title 10, Chapter 7

Unclaimed Property Law

§ 1531. Notice and publication of lists of escheated property

(a) Within one year after payment or delivery of escheated property as required by Section 1532, the Controller shall cause a notice to be published, in a newspaper of general circulation which the Controller determines is most likely to give notice to the apparent owner of the property.

(b) Each published notice shall be entitled "notice to owners of unclaimed property."

(c) Each published notice shall also contain a statement that information concerning the amount or description of the property may be obtained by any persons possessing an interest in the property by addressing any inquiry to the Controller.

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

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

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

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

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

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

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

Code of Civil Procedure

Title 10, Chapter 7

Unclaimed Property Law

§ 1531.5. Notification program for possible owners of escheated property

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

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

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

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

necessary in attempting to locate the owner of unclaimed property.

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

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

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

Code of Civil Procedure

Title 10, Chapter 7

Unclaimed Property Law

§ 1532. Payment or delivery of escheated property

(a) Every person filing a report as provided by Section 1530 shall, no sooner than seven months and no later than seven months and 15 days after the final date for filing the report, pay or deliver to the Controller all escheated property specified in the report. Any payment of unclaimed cash in an amount of at least twenty thousand dollars ($20,000) shall be made by electronic funds transfer pursuant to regulations adopted by the Controller. The Controller may postpone the date for payment or delivery of the property, and the date for any report required by subdivision (b), upon his or her own motion or upon written request by any person required to pay or deliver the property or file a report as required by this section.

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

Controller, containing information pertaining to the property subject to escheat.

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

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

(e) Payment of any intangible property to the Controller shall be made at the office of the Controller in Sacramento or at another location as the Controller by regulation may designate. Except as otherwise agreed by the Controller and the

holder, tangible personal property shall be delivered to the Controller at the place where it is held.

(f) Payment is deemed complete on the date the electronic funds transfer is initiated if the settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If the settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

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

(h) An electronic funds transfer shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, a Federal Reserve Wire Transfer (Fedwire), or by an international funds transfer. Banking costs incurred for the automated clearinghouse debit transaction by

the holder shall be paid by the state. Banking costs incurred by the state for the automated clearinghouse credit transaction may be paid by the holder originating the credit. Banking costs incurred for the Fedwire transaction charged to the holder and the state shall be paid by the person originating the transaction. Banking costs charged to the holder and to the state for an international funds transfer may be charged to the holder.

(i) For purposes of this section:

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

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

(3) "Automated clearinghouse debit" means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the holder's bank

account and crediting the state's bank account for the amount of payment.

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

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

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

Code of Civil Procedure

Title 10, Chapter 7

Unclaimed Property Law

§ 1532.1. Payment or delivery of property escheated to state

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

Code of Civil Procedure

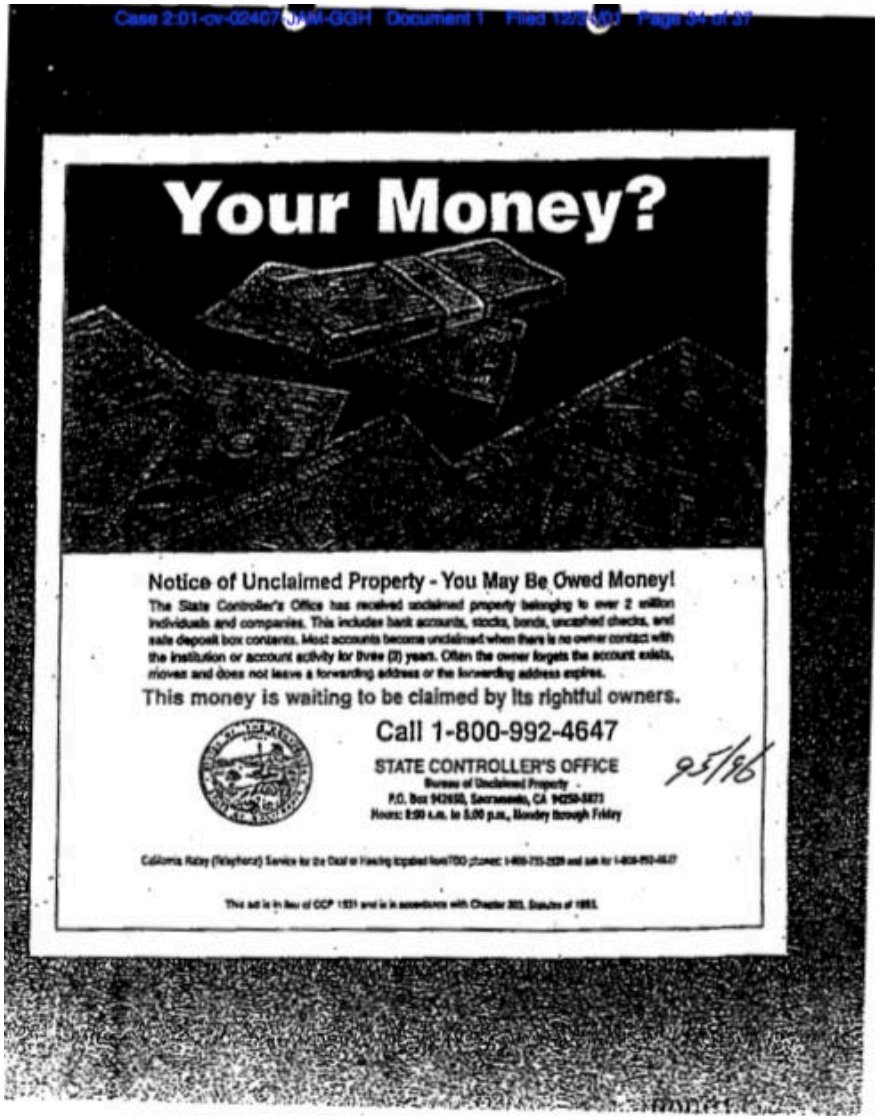
Title 10, Chapter 7

Unclaimed Property Law

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

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

APPENDIX E


Case 2:01-cv-02407
Document 1
Your Money?
Notice of Unclaimed Property - You May Be Owed Money!
The State Controller's Office has received unclaimed property belonging to over 2 million individuals and companies. This includes bank accounts, stocks, bonds, uncashed checks, and safe deposit box contents. Most accounts become unclaimed when there is no owner contact with the institution or account activity for three (3) years. Often the owner forgets the account exists, moves and does not leave a forwarding address or the forwarding address expires.
This money is waiting to be claimed by its rightful owners.
Call 1-800-992-4647
STATE CONTROLLER'S OFFICE
Bureau of Unclaimed Property
P.O. Box 942850, Sacramento, CA 94250-5873
Hours: 8:00 a.m. to 5:00 p.m., Monday through Friday
95/96

94/95 F.Y.

YOU MAY BE OWED MONEY!

Notice of Unclaimed Property

STATE CONTROLLER'S OFFICE
Division of Unclaimed Property
P.O. Box 942850
Sacramento, CA 94250-5873

The State Controller's Office has received unclaimed property belonging to over 2 million individuals and companies. This includes bank accounts, stocks, bonds, uncashed checks, and safe deposit box contents. Most accounts become unclaimed when there is no owner contact with the institution or account activity for three (3) years. Often the owner forgets the account exists, moves and does not leave a forwarding address or the forwarding address expires.

This money is waiting to be claimed by its rightful owners.

Call 1-800-992-4647

California Relay (Telephone) Service for the Deaf or Hearing Impaired From TDD phones: 1-800-735-2929 and ask for 1-800-992-4647

This ad, covering warrants issued in the 1989 through 1993 reporting periods, is in lieu of CCP 1531 and is in accordance with Chapter 139, Statutes of 1994.