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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

RICHARD HELTEBRAKE, Plaintiff and Appellant, v. CITY OF LOS ANGELES et al., Defendants and Respondents.	B279424 (Los Angeles County Super. Ct. No. BC507269)

APPEAL from a judgment of the Superior Court of Los Angeles County, William F. Fahey, Judge. Affirmed.

Allen L. Thomas and Sivi G. Pederson for Plaintiff and Appellant.

Michael N. Feuer, City Attorney and Gabriel S. Dermer, Assistant City Attorney for Defendant and Respondent City of Los Angeles.

Rutan & Tucker and Robert Owen for Defendant and Respondent City of Irvine.

Gregory P. Priamos, County Counsel, James E. Brown, Assistant County Counsel, and Kelly A. Moran, Deputy County Counsel for Defendant and Respondent County of Riverside.

Richards, Watson & Gershon, T. Peter Pierce and Jennifer Petrusis for Defendant and Respondent Richards, Watson & Gershon.

I. INTRODUCTION

Plaintiff Richard Heltebrake seeks all or part of a $1 million reward offered for information leading to the apprehension of Christopher Dorner, a killer who was the subject of a manhunt throughout southern California in February 2013. The reward funds came from money donated to the Donner Reward Trust Account, administered by defendant Richards, Watson & Gershon (RWG), a law firm. A panel of three retired judges reviewed the reward claims and recommended in a 12-page written ruling that the trust funds be apportioned to several other people. Defendants the City of Los Angeles (Los Angeles), the City of Irvine (Irvine), and the County of Riverside (Riverside) all followed that recommendation in awarding rewards. The three-judge panel noted that plaintiff had not submitted a claim under the reward procedures and thus was not a claimant at all. The panel also found that plaintiff did not in fact provide information leading to Dorner's capture, as law enforcement had already spotted Dorner at the time plaintiff provided information by telephone.

Plaintiff sued the two cities and county for breach of contract, violation of due process rights, and declaratory relief.

Plaintiff also sued RWG for breach of a fiduciary duty owed to him as a trustee of the Dorner Reward Trust Account as well as declaratory relief.

The trial court granted judgment for defendants, following an order granting a motion for judgment on the pleadings to Riverside and summary judgment to the other three defendants. We affirm.

II. MOTION FOR JUDGMENT ON THE PLEADINGS

Because the standard of review for a motion for judgment on the pleadings is very different from the one for summary judgment, we will address Riverside's judgment on the pleadings separately from the summary judgment granted to the other defendants.

"'A judgment on the pleadings in favor of the defendant is appropriate when the complaint fails to allege facts sufficient to state a cause of action. ([] § 438, subd. (c)(3)(B)(ii).) A motion for judgment on the pleadings is equivalent to a demurrer and is governed by the same de novo standard of review.' [Citation.] 'All properly pleaded, material facts are deemed true, but not contentions, deductions, or conclusions of fact or law . . . .' [Citation.]" (*People ex rel. Harris v. Pac Anchor Transportation, Inc.* (2014) 59 Cal.4th 772, 777.) "Additionally, to the extent the factual allegations conflict with the content of the exhibits to the complaint, we rely on and accept as true the contents of the exhibits and treat as surplusage the pleader's allegations as to the legal effect of the exhibits." (*Barnett v. Fireman's Fund Ins. Co.* (2001) 90 Cal.App.4th 500, 505 [demurrer context].) "[W]e must review the pleadings to determine whether the facts, as

alleged in the complaint, support any valid cause of action against the defendant, or if not, whether the complaint could be reasonably amended to do so. [Citations.] Where a complaint could reasonably be amended to allege a valid cause of action, we must reverse the judgment. [Citation.] Leave to amend is liberally allowed; a specific request to amend is not required as a prerequisite to review on appeal the trial court's decision not to grant leave to amend. [Citation.]" (*Kempton v. City of Los Angeles* (2008) 165 Cal.App.4th 1344, 1347-1348.) We accept as true plaintiff's properly pled facts in the operative second amended complaint, filed April 18, 2016.

A. Facts and Allegations

Dorner killed three individuals, including a Riverside police officer, and wounded two other officers. During the hunt to find and apprehend Dorner, on February 10, 2013, former Los Angeles mayor Antonio Villaraigosa, City of Riverside mayor Rusty Bailey, and former Irvine mayor Steven Choi, along with members of law enforcement agencies, appeared at a televised news conference. Villaraigosa announced a reward of $1 million for the apprehension and capture of Dorner. The reward would be comprised of funds donated from multiple jurisdictions.

On the same day that Villaraigosa announced the reward, Riverside Board of Supervisors members John Benoit and John Tavaglione submitted a written and signed recommendation for a proposed motion authorizing "a reward of up to $100,000 for information leading to the arrest and capture of . . . Dorner." On February 13, 2013, the Riverside Board of Supervisors unanimously approved the February 10 motion. The February 10

motion as amended was as follows: "The Board of Supervisors offers a reward of up to $100,000 for information leading to the apprehension of . . . Dorner."

Meanwhile, plaintiff, a camp ranger at Camp Tahquitz in San Bernardino National Forest, became aware of the reward offer on February 10, 2013. On February 12, Dorner encountered plaintiff and stole his vehicle. Plaintiff then called a local sheriff's deputy, Paul Franklin, at 12:40 p.m. to report the incident. While on the phone, plaintiff heard gunfire from the direction in which Dorner had driven. Because of plaintiff's phone call (plaintiff alleged), law enforcement became aware of the vehicle Dorner was driving and the direction he was going. Dorner subsequently died.

Plaintiff notified Riverside that he had accepted Riverside's reward offer by presenting a government claim on February 25, 2013, which Riverside rejected. On or about April 5, 2013, Los Angeles issued a document entitled "Procedures for the Dorner Investigation Reward" (Procedures). The Procedures required any claimants to the reward to agree to an administrative process to determine who qualified. The Procedures designated a three-judge panel, composed of retired judges (Judge Lourdes Baird, Judge Robert Bonner, and Justice Carlos Moreno), to do the evaluation. Any claimant had to agree to waive any right to a jury and any right to appeal the three-judge panel's decision. The Procedures indicated that failure to agree to the Procedures would result in forfeiture of the right to the reward money. The Procedures also contained a claim that plaintiff would risk jeopardizing his claims to other public entities for their reward.

On May 6, 2013, the three-judge panel issued its memorandum of decision on the Dorner reward. The panel

instructed Los Angeles and RWG to pay reward money as follows: 80 percent to James and Karen Reynolds; 5 percent to R. Lee McDaniel; and 15 percent to Daniel McGowan.

On or about June 12, 2013, the Riverside Executive Office submitted a motion to the Riverside Board of Supervisors. The motion requested that the Riverside Board of Supervisors authorize disbursement of the Dorner reward payments as recommended by the three-judge panel. On or about June 15, 2013, a hearing was held at which the Dorner reward fund was discussed, and at which plaintiff complained of not having a full opportunity to be heard on the matter. On or about June 18, 2013, the Riverside Board of Supervisors unanimously voted to adopt the June 12 motion.

Plaintiff asserted claims for breach of contract, procedural due process violation under title 42 United States Code section 1983, Article I section 10 of the United States Constitution, and the Fifth and Fourteenth Amendments to the United States Constitution, and declaratory relief against Riverside. Plaintiff alleged Riverside's offer was accepted when he provided information to Deputy Franklin. For the procedural due process violation, plaintiff alleged a property right to the reward, which Riverside then deprived him of when it adopted the three-judge panel's recommendation. Plaintiff's declaratory relief was premised on the breach of contract and procedural due process claims.

B. *Trial Court's Ruling*

Following Riverside's motion for judgment on the pleadings for failure to state a cause of action pursuant to Code of Civil

Procedure[1] section 438, subdivision (c)(1)(B)(ii), the trial court rejected plaintiff's breach of contract claim, finding there was no contract between Riverside and plaintiff. The court also found plaintiff had no vested property right to Riverside's reward offer. The court found leave to amend not appropriate based on the case having been pending for three years and plaintiff's failure to proffer what additional facts he could allege as to Riverside. The trial court granted Riverside judgment on the pleadings without leave to amend.

C. *Discussion*

1. Breach of Contract

An offer of a reward is an offer of a unilateral contract that may be accepted by performance. (*Davis v. Jacoby* (1934) 1 Cal.2d 370, 378.) Here, however, plaintiff alleges such an offer made by a public official or entity, rather than by a private individual. To the extent plaintiff is alleging an offer by the County of Riverside at the February 10, 2013, press conference, he essentially alleges that the county is bound by the unilateral offer that a Los Angeles mayor made. Even putting aside that the Los Angeles mayor is not an agent of the County of Riverside, we do not believe an individual official can bind an entity to a unilateral contract, absent some official authorization for the individual's activity.

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[1] Further statutory references are to the Code of Civil Procedure unless otherwise indicated.

Penal Code section 1547 provides such authorization to the Governor of our state. That section authorizes the Governor to offer rewards for the information leading to the arrest and conviction of a felon, and California authority previously found that power exclusively held by the Governor. (*Brite v. Board of Supervisors* (1937) 21 Cal.App.2d 233, 237 ["[T]he legislature intended to confine the offering of rewards for the apprehension of persons charged with offenses against the people of the state, exclusively in the Governor, and vested the same exclusively in him. The authorities in support of this position are practically unanimous and have been approved by the courts of this state"]; *City of Los Angeles v. Gurdane* (9th Cir. 1932) 59 F.2d 161, 165 ["we hold that the city of Los Angeles possesses neither the express nor the implied power to offer a reward for the apprehension an conviction of a felon"].)

Since those cases were decided, the Legislature has enacted statutes allowing for local agencies to offer rewards for similar information.[2] Because an agency's authority to contract for a reward for apprehension of a criminal must be grounded in law,

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[2] Government Code section 53069.5, originally enacted in 1969, provides: "A local agency . . . may offer and pay a reward, the amount thereof to be determined by the local agency, for information leading to . . . the apprehension of . . . any person whose willful misconduct results in injury or death to any person . . . ." Government Code section 53069.7, originally enacted in 1971, provides: "A local agency . . . may offer and pay a reward, the amount thereof to be determined by the local agency, to any person . . . who furnishes information leading to the arrest and conviction of any person or persons killing or assaulting with a deadly weapon or inflicting serious bodily harm upon a peace officer of the local agency while such officer is acting in the line of duty."

we think it follows that for a public entity to be bound by a reward contract, a reward offer must be made pursuant to the entity's charter or other governing legal authority. (See *Griffin v. City of Los Angeles* (1933) 134 Cal.App.763, 774 [stating that Los Angeles may offer reward for information leading to felon's arrest so long as city council takes the action under then-proper principles]; *City of Los Angeles v. Gurdane*, *supra*, 59 F.2d at p. 164 ["'a public officer cannot bind the state or any of its subdivisions by such an offer unless authority is conferred by legislation'"].)

Plaintiff asserts he accepted Riverside's offer when, on February 12, 2013, he provided information to Deputy Franklin, which, he alleges, was a substantial factor in Dorner's apprehension. Even deeming the pleadings true, however, we agree with Riverside that the February 10 reward offer by Los Angeles mayor Villaraigosa did not, taken alone, create an enforceable offer of a unilateral contract that can bind Riverside, even if, as alleged, plaintiff thereafter performed by providing the information requested.

Instead, to bind a public entity such as Riverside to a unilateral contract, the offer must be pursuant to some legal authority. Plaintiff attached and referenced as an exhibit to his second amended complaint the motion unanimously approved by the county's Board of Supervisors on February 13, 2013, *after* plaintiff provided information. If Riverside made a unilateral offer, it would be at this time through such a procedure.

However, as pled, the offer even at that time was gratuitous. The requested performance was "information leading to the apprehension of . . . Dorner." As pled, Riverside already knew Dorner had been apprehended and then died that same

day. Because the offer was made after Dorner's apprehension, no person could rely on the offer in acting to provide information leading to his capture. Because the offer was a gratuitous promise, no enforceable contract could be formed between Riverside and plaintiff, or anyone else based on it. Though plaintiff asserts Riverside intended to pay its reward for information already provided by law enforcement leading to Dorner's apprehension, that intent does not form a contract between plaintiff and Riverside, even though Riverside is free to pay such funds. The county's actions may be reviewed by writ of mandate under section 1085 using appropriate standards, but this is not such a challenge; it is a lawsuit for breach of contract and other claims.

Plaintiff also asserts that Riverside had a moral obligation which served as sufficient consideration to create a contract, citing *Desny v. Wilder* (1956) 46 Cal.2d 715, 738, and Civil Code section 1606.[3] The argument is unpersuasive. First, we have found no cases, nor has plaintiff identified any, that have applied moral obligation under Civil Code section 1606 to public entities such as Riverside. Second, even if Civil Code section 1606's moral obligation does apply to public entities, plaintiff has failed to demonstrate a moral obligation exists here. A "moral obligation" is defined as: "A previously existing duty that has become inoperative by positive law, such as a statute of

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[3] Civil Code section 1606 provides: "An existing legal obligation resting upon the promisor, or a moral obligation originating in some benefit conferred upon the promisor, or prejudice suffered by the promisee, is also a good consideration for a promise, to an extent corresponding with the extent of the obligation, but no further or otherwise."

limitations. . . . [It may be] sufficient to support an express promise as valuable consideration because it amounts to the voluntary revival or creation of a duty that existed once before but had been dispensed with." (Black's Law Dict. (10th ed. 2014), p. 1243, col. 2.) "'California cases have construed [Civil Code section 1606] to mean that a "moral obligation is sufficient to support an express promise, where a good and valuable consideration has once existed." [Citations.]'" (*Estate of McConnell* (1936) 6 Cal.2d 493, 498; 1 Witkin, Summary of Cal. Law (11th ed. 2017) Contracts, § 222, p. 251 ["[Civil Code section 1606] has been construed to mean that a moral obligation will support a promise only where a valuable consideration once existed; e.g., where a formerly valid claim has been barred by the statute of limitations or bankruptcy . . . . In the absence of a prior legal obligation founded upon valuable consideration, a moral obligation is insufficient"].) The pleadings do not indicate plaintiff and Riverside had a prior legal duty as to the reward. Under the circumstances alleged, we do not find a moral obligation supporting consideration exists.

Plaintiff's allegations also do not establish that he accepted the offer Riverside actually made, putting aside that it occurred after his performance and was gratuitous. As he did in trial court, plaintiff alleges that the only term of the contract was an offer of $100,000 for information leading to the apprehension of Dorner. This was also reiterated in plaintiff's attached February 25, 2013 letter to Riverside, in which he described Riverside's February 13, 2013 offer only as "a reward of up to $100,000 for information leading to the apprehension of . . . Dorner."

Under the terms of Riverside's offer, however, a claimant did not automatically receive money: "[i]n the event that more than one person files a claim for the reward, and is eligible to receive proceeds from the reward, the Executive Office will consult with law enforcement officials to determine the importance of the information to the investigation. The Executive Office will then provide the Board of Supervisors with recommendations about what portion of the reward should go to each claimant." Plaintiff made no mention of the above provisions regarding the Executive Office's recommendations being a part of the purported offer. In fact, as an exhibit to the second amended complaint shows, the county's Executive Office concluded in its recommendation to the Board of Supervisors that plaintiff had not actually provided information that led to Dorner's apprehension.[4] The Board of Supervisors awarded funds as recommended. Such a conclusion was at least facially proper performance by Riverside based on the offer it made. Based on the pleadings, plaintiff has not alleged that he warrants recovery for breach of contract under the terms of that offer.

The trial court did not err by finding plaintiff failed to state a cause of action for breach of contract. As a matter of law, there was no contract.

We note that even if a public official can bind an unrelated public entity by making (without particular authorization) a reward offer at a news conference, the offer here may not have

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[4] "The San Bernardino County Sheriff's Department reports that law-enforcement officers already had located Dorner and returned fire before any information [plaintiff] provided could be shared with the large force hunting for Dorner. Therefore, [plaintiff] would not be eligible for a reward payment . . . ."

been sufficiently definite to be enforced. (*Harris v. Time, Inc.* (1987) 191 Cal.App.3d 449, 455 ["an advertisement can constitute an offer, and form the basis of a unilateral contract, if it calls for performance of a specific act without further communication *and leaves nothing for further negotiation*"] (emphasis added).) Even if it approves and announces a reward to create an offer of a unilateral contract, the public entity maintains the ability, at a minimum, to set up reasonable claims procedures and make reasonable determinations after such a general offer is made.

2. Procedural Due Process

Plaintiff alleges he had an existing property right of which he was deprived of due process under Article I, section 10 of the United States Constitution and the Fifth and Fourteenth Amendments to the United States Constitution. Plaintiff asserts Riverside's procedures, including the June 15 and 18, 2013 hearings, violated his right to the reward.

"Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." (*Mathews v. Eldridge* (1976) 424 U.S. 319, 332.) "[I]n order for there to be a 'property interest' subject to due process protection, there must be some 'government benefit' to which 'a person has a legally enforceable right.' Moreover, such rights '"are not created by the Constitution."' Rather, they are '"created and their dimensions are defined by *existing* rules or understandings that stem from an independent source such as state law-rules or understandings that secure certain benefits and that support claims of

entitlement to those benefits.'" [(*Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, 207.)]" (*People ex rel. Dept. of Transportation v. Lucero* (1980) 114 Cal.App.3d 166, 172.) "A benefit is not a protected property interest under the due process clause if the decision maker has the discretion to grant or deny the benefit." (*Las Lomas Land Co., LLC v. City of Los Angeles* (2009) 177 Cal.App.4th 837, 853.)

Riverside asserts plaintiff has no property right to a reward. We agree. Here, as discussed above, an individual's claim to a reward was reviewed by the county's Executive Office and law enforcement. The Executive Office recommended who should receive a reward based on the value of the information provided which lead to Dorner's apprehension. As the Executive Office found, plaintiff's information did not lead to Dorner's apprehension. Because Riverside had discretion in determining who would receive the reward and decided to deny plaintiff's claim, plaintiff did not have a claim to the reward. Accordingly, plaintiff never obtained a property interest in a reward. Plaintiff thus failed to state a cause of action for violation of procedural due process.

3. Declaratory Relief

To state a cause of action for declaratory relief, plaintiff must demonstrate a proper subject of declaratory relief and an actual controversy involving justiciable questions relating to the rights or obligations of a party. (*Brownfield v. Daniel Freeman Marina Hospital* (1989) 208 Cal.App.3d 405, 410; see § 1060 ["Any person interested . . . under a contract, or who desires a declaration of his or her rights or duties with respect to another,

or in respect to, in, over or upon property . . . may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action . . . in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the . . . contract. . . . The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought"].)

Plaintiff's declaratory relief cause of action is premised on the breach of contract and procedural due process claims. As we have determined plaintiff fails to state a cause of action for either breach of contract or procedural due process, plaintiff likewise fails to state a cause of action for declaratory relief. Plaintiff fails to allege an actual controversy exists.

4. Leave to Amend

We reverse a denial of leave to amend where it is an abuse of discretion. (See *Virginia G. v. ABC Unified School Dist.* (1993) 15 Cal.App.4th 1848, 1852 ["Where a demurrer is sustained or a motion for judgment on the pleadings is granted as to the original complaint, denial of leave to amend constitutes an abuse of discretion if the pleading does not show on its face that it is incapable of amendment"].) Here, plaintiff argues he has discovered additional facts that would demonstrate the procedures used by Riverside in determining entitlement to the reward were unfair. However, plaintiff does not identify these facts and has failed to demonstrate how these facts would cure the deficiencies in the pleadings. As discussed, based on the pleadings, there is no breach of contract claim because there was

no contract. Furthermore, the procedures used by Riverside were identified in the reward offer, namely that the Executive Office would make a recommendation as to who would receive the reward for Riverside's Board of Supervisors to then decide. Whether the procedures were "fair" is immaterial for purposes of stating a cause of action here. Given these pleadings, we conclude the second amended complaint could not reasonably be amended to state a cause of action against Riverside.

III. SUMMARY JUDGMENT

A. *Standard of Review*

"[F]rom commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law. That is because of the general principle that a party who seeks a court's action in his favor bears the burden of persuasion thereon. [Citation.] There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof . . . . [¶] [T]he party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact . . . . A prima facie showing is one that is sufficient to support the position of the

party in question. [Citation.] [Fns. omitted.]" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850-851.)

We review an order granting summary judgment de novo. (*Coral Construction, Inc. v. City and County of San Francisco* (2010) 50 Cal.4th 315, 336.) The trial court's stated reasons for granting summary judgment are not binding because we review its ruling not its rationale. (*Ibid.*) In addition, a summary judgment motion is directed to the issues framed by the pleadings. (*Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1252.) These are the only issues a motion for summary judgment must address. (*Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1249-1250.)

B. *Los Angeles*

1. Facts[5]

Los Angeles's city charter and Administrative Code provides that all contracts with Los Angeles reasonably valued at more than $1,000 are to be made in writing, approved by the city attorney, and signed by the mayor or other authorized person. (L.A. City Charter, § 370; L.A. Admin. Code, § 10.2.) Los Angeles also has rules regarding claiming rewards. The maximum reward paid by the city shall not exceed $100,000 when the victim is public safety personnel of the city. (L.A. Admin. Code, § 19.123, subd. (b)(6)(D).) Filing or submitting information shall not establish any legal claim to, or right of recovery, for a reward offered by Los Angeles. (L.A. Admin. Code, § 19.125.) All

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[5] For all three motions, the facts are undisputed unless otherwise indicated.

decisions regarding reward payments are within the City Council's sole discretion. (L.A. Admin. Code, § 19.126.)

Plaintiff called Deputy Franklin on February 12, 2013, after Dorner had stolen plaintiff's vehicle, to notify Franklin of Dorner's whereabouts. Also on February 12, 2013, at a public meeting, the Los Angeles City Council introduced and approved a motion pursuant to the Administrative Code offering a maximum reward of $100,000 for the apprehension and conviction of Dorner.

On April 5, 2013, the "Christopher Dorner Reward Procedures" were posted on the Los Angeles Police Department's Web site. The Procedures required any individual who sought to claim reward money to submit a written claim to Lieutenant Natalie Cortez with a signed acknowledgement and waiver form by April 19, 2013. The Procedures stated that any claims that fail to include a signed acknowledgment and waiver form will not be considered. Plaintiff did not submit a claim in accordance with the Procedures. Instead, plaintiff sent a letter to the Los Angeles City Clerk on February 19, 2013, asserting he had performed the terms of Los Angeles's reward offer.

On June 18, 2013, at a public meeting, the Los Angeles City Council approved the distribution of the $100,000 reward recommended by the three-judge panel: 5 percent to McDaniel; 15 percent to McGowan; and 80 percent to James and Karen Reynolds.

2. Discussion

a. breach of contract

Los Angeles asserts there was no breach of contract between Los Angeles and plaintiff regarding the reward. In support, Los Angeles contends the reward was discretionary pursuant to Los Angeles Administrative Code section 19.126, which provides: "All decisions with respect to the relevance or materiality of information received, whether or not utilized in establishing the . . . apprehension . . . of any one or more persons provides a basis for payment of a reward, are within the sole discretion of the City Council." Also relevant is Los Angeles Administrative Code section 19.125, which states that "[n]either the filing or submitting of information, nor the receipt or consideration thereof by the City, shall establish any legal claim to, or right of recovery of, any reward offered by the City." (See also L.A. Admin. Code, § 19.127 ["The City Council, in its sole discretion, may determine what portion of a reward, if any, is to be paid to any one or more persons . . . ."].) Los Angeles's reward offer was pursuant to Division 19, Chapter 12, Article 1 of the Los Angeles Administrative Code, which includes sections 19.125, 19.126, and 19.127. Los Angeles asserts the Procedures were an exercise of its discretion to help determine who should receive what portion of the reward.

Los Angeles met its initial burden of production. The February 12, 2013 motion adopting the reward offer is subject to the Los Angeles Administrative Code provisions governing rewards. This necessarily included the provision in Los Angeles Administrative Code sections 19.126 and 19.127 that the City

Council had sole discretion to decide the relevance of the information received as a basis for payment of a reward, including setting up the aforementioned Procedures as a means for determining who would receive a reward. Thus, pursuant to Los Angeles Administrative Code provisions governing rewards, Los Angeles can offer a reward and has discretion in who to give a reward. Furthermore, plaintiff has no legal claim to a reward offered by Los Angeles, regardless of whatever information he provides. (L.A. Admin. Code, § 19.125.)

Assuming there was a contract between Los Angeles and plaintiff, the terms were as follows: in exchange for information leading to Dorner's apprehension, an individual has the opportunity to receive a reward, pursuant to the Los Angeles Administrative Code. Thus, there was no breach of contract between plaintiff and Los Angeles as to a reward. The burden shifts to plaintiff to demonstrate a triable issue of material fact exists to support his breach of contract claim. (§ 437c, subd. (p)(2).)

Plaintiff contends Los Angeles executed a "contract," citing the reward offer, and thus owed plaintiff a reward. We disagree. The reward offer, again, was subject to Division 19, Chapter 12, Article 1 of the Los Angeles Administrative Code, which includes the City Council having sole discretion to decide the relevance of any information submitted in determining the reward. This also would include the City Council using the Procedures to assist in making that determination. The City Council clearly chose to exercise its discretion by awarding plaintiff no reward. Plaintiff asserts California law prohibits Los Angeles from enacting any legislation that negates a contract ex post facto or impairs a contract. (Cal. Const., art. 1, § 9.) However, under the Los

Angeles Administrative Code governing rewards, any reward offered by Los Angeles is subject to City Council approval as to who gets what portion of the reward, if any. Plaintiff also fails to provide any argument as to how Los Angeles's reward offer, assuming it was accepted by plaintiff as a contract, violated plaintiff's purported contractual rights. The reward offer was given subject to the Los Angeles Administrative Code, including the City Council having sole discretion as to who to give a reward. If plaintiff accepted this reward offer, he accepted this condition as well. Plaintiff does not present a triable issue of material fact demonstrating a breach of contract between Los Angeles and plaintiff as to the reward.

b. procedural due process

Like Riverside, Los Angeles argues plaintiff has no property interest in the reward and thus fails to state a claim for violation of procedural due process. Los Angeles has met its initial burden of production. As discussed, under the terms of Los Angeles's reward offer, any reward payment was subject to the sole discretion of the City Council. The City Council chose to give plaintiff no reward, as was its prerogative under the terms of the reward and the Los Angeles Administrative Code. Plaintiff thus had no property interest in the reward. (*Las Lomas Land Co., LLC v. City of Los Angeles, supra*, 177 Cal.App.4th at p. 853.) Plaintiff fails to present any argument or evidence that disputes this legal conclusion.

c. declaratory relief

Because plaintiff's declaratory relief claim is premised on the breach of contract and procedural due process claims, Los Angeles argues there are no triable issues of material fact demonstrating an actual controversy exists. Plaintiff raises no triable issue, and the declaratory relief claim fails as a matter of law.

There are no triable issues of material fact for any of plaintiff's claims against Los Angeles. Accordingly, Los Angeles is entitled to summary judgment as a matter of law as to all of plaintiff's causes of action against it.

C. *Irvine*

1. Facts

Former Irvine mayor Choi was present at Villaraigosa's press conference on February 10, 2013 where the multi-agency reward was announced. On March 4, 2013, Choi instructed City Manager Sean Joyce to place on the March 12 agenda an item discussing contributing $100,000 to a multi-agency reward fund regarding Dorner. On March 12, 2013, the Irvine City Council adopted a resolution approving contribution of $100,000 to the "multi-agency reward fund" for information that lead to the identification and apprehension of Dorner. Plaintiff through his attorney sent a letter dated March 19, 2013 to the Irvine City Clerk purporting to accept this contract. On April 3, 2013, Irvine wired $100,000 to the "Dorner Reward Trust Account" (Trust Account), the aforementioned multi-agency reward fund, in the

care of RWG. The Procedures were issued April 5, 2013. Irvine agreed to participate in the Procedures.

On April 10, 2013, Choi sent a letter to plaintiff's attorney referencing the Procedures and inviting him to participate. On May 6, 2013, the three-judge panel evaluated the claims and issued its decision. The three-judge panel noted plaintiff did not submit a claim pursuant to the Procedures and would receive no reward from the Trust Account.

2. Discussion

a. breach of contract

Irvine contends that the two documents which purportedly form the contract offer were Choi's March 4, 2013 memo and the Irvine City Council's March 12, 2013 resolution. Irvine cites its form Interrogatory No. 50.1 served on plaintiff, which asked, "(a) Identify each DOCUMENT that is part of the agreement . . . ." Plaintiff responded, "City or [*sic*] Irvine Memo from Mayor Steven S. Choi, Ph.D., dated March 4, 2013: re: Contribution to Multi-Agency Reward; City of Irvine City Council Resolution authorizing $100,000 contribution to Multi-Agency Reward Fund, dated March 12, 2013."[6]

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[6] Plaintiff's interrogatory responses are entitled "PLAINTIFF, RICHARD, HELTEBRAKE'S, RESPONSES TO DEFENDANT, CITY OF LOS ANGELES', FORM INTERROGATORIES, SET ONE." However, Irvine's counsel declared these interrogatory responses were the ones proffered in response to Irvine's form interrogatories. As plaintiff has failed to dispute Irvine's counsel's declaration, we treat plaintiff's

Irvine argued there was no breach of contract because plaintiff cannot demonstrate any breach, even assuming there was a contract. Pursuant to Choi's March 4, 2013 memo, the multi-organization reward would "include[] establishing an escrow account and a stakeholder evaluation committee. The committee, comprised of representatives from participating organizations, will collectively evaluate the relevance of information received and make recommendations on an appropriate reward distribution to those who were instrumental in leading to the identification and apprehension of the murder suspect." Because the March 4, 2013 memo is part of the purported contract, Irvine's terms included a committee to evaluate the relevance of information received and to make recommendations on an appropriate reward distribution. Even assuming the March 4, 2013 memo was not part of the purported contract, the March 12, 2013 resolution was only to contribute to the multi-agency reward fund, identified as the Trust Account. It is undisputed that this occurred. It is also undisputed plaintiff did not comply with the Procedures of the multi-agency reward fund.

Alternatively, Irvine argued there was no mutual consent. Plaintiff obviously did not agree to Irvine's purported contractual terms in the March 4, 2013 memo and the March 12, 2013 resolution. In plaintiff's March 19, 2013 letter to Irvine, plaintiff purported to accept "the [Irvine] City Council's offer of a reward in the published amount of at least $100,000." Plaintiff made no mention of participation in any committee evaluating the information and determining who would receive the reward.

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interrogatory response as being in response to Irvine's form interrogatories.

Irvine has met its initial burden of production that even assuming a contract, there was no breach. Based on the undisputed facts, there is nothing in the March 4, 2013 or the March 12, 2013 resolution that purports to pay plaintiff the reward directly. Rather, the terms, assuming there was a contract, were that the $100,000 reward would go to the multi-agency reward fund. As evidenced by the memo, a committee would then evaluate the relevant information received and recommend who should receive a reward for the apprehension of Dorner. We also find Irvine has met its initial burden of production on the alternative theory that there was no mutual consent, as plaintiff maintained the only terms of the contract were $100,000 for providing information leading to Dorner's apprehension.

The burden shifts to plaintiff to demonstrate triable issues of material fact exist. (§ 437c, subd. (p)(2).) Plaintiff first contends that the March 4, 2013 memo is not a part of the purported contract, asserting that the Irvine City Council did not adopt it as part of the resolution. However, plaintiff's response to Irvine's interrogatory indicated that the March 4, 2013 memo is part of the purported contract. "Parties must 'state the truth, the whole truth, and nothing but the truth in answering written interrogatories' [citation] . . . ." (*Guzman v. General Motors Corp.* (1984) 154 Cal.App.3d 438, 442.) Interrogatory responses may be relied upon as evidence for summary judgment. (§ 437c, subd. (b)(1); *Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573, 580.)

Plaintiff argues that Irvine entered into a contract with him when it offered a reward via its March 12, 2013 resolution. Again, even assuming the Irvine City Council's resolution was

the only term of the contract, the resolution only approved $100,000 to the multi-agency reward fund, not to plaintiff. Plaintiff has also failed to raise a triable issue indicating Irvine and plaintiff mutually consented to the same material terms. Plaintiff does not discuss the resolution's own terms that the $100,000 reward is "approved and authorized for inclusion in *the multi-agency reward fund* stated above," specifically identified as a multi-agency reward fund for information leading to Dorner's apprehension. Plaintiff's breach of contract claim thus fails here.

b. procedural due process and declaratory relief

Like Los Angeles, Irvine also asserts plaintiff is not entitled to procedural due process because plaintiff failed to raise a triable issue indicating he had a property interest in the reward. Irvine has met its burden of production. Irvine cited plaintiff's lack of contractual right to any reward from Irvine, for which, as discussed, there is no triable issue of material fact. Plaintiff fails to raise a triable issue for his due process claim. As to Irvine's motion regarding the declaratory relief claim, for the reasons stated above as to Los Angeles, Irvine has met its burden of production, and plaintiff fails to raise a triable issue.

There are no triable issues of material fact for any of plaintiff's claims against Irvine. Accordingly, Irvine is entitled to summary judgment as a matter of law as to all of plaintiff's causes of action against it.

D. *RWG*

1. Facts

On April 5, 2013, Los Angeles issued the Procedures, which provided, "Claimants will be required to follow the procedures outlined in this document in order to be considered eligible for the reward, or any portion thereof, held within the trust fund account." Entities that chose to participate in the Procedures agreed to place their donated funds in a trust account and the funds would be distributed as set forth in the Procedures. As discussed earlier, a three-judge panel composed of Judge Baird, Judge Bonner, and Justice Moreno would make a recommendation as to whether any claimant offered information leading to the apprehension of Dorner, and how the reward money would be distributed, if at all. RWG would handle distribution of the reward funds per the three-judge panel's decision.

On or about March 28, 2013, Lena Chiang, executive director at RWG, opened a checking account at American Business Bank, the Trust Account. The purpose of the Trust Account was to receive donations made by entities that would later be distributed by RWG in accordance with the three-judge panel's decision regarding which individuals would receive what amount.[7] On May 6, 2013, the three-judge panel issued its decision, apportioning the reward funds as follows: 5 percent to McDaniel; 15 percent to McGowan; and 80 percent to James and

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[7] Plaintiff objected to Chiang's declaration stating the purpose of the Trust Account. This objection was overruled, and not challenged on appeal.

Karen Reynolds. Plaintiff was not a reward recipient as he did not submit a claim under the Procedures.

On April 3, 2013, Irvine sent a wire transfer of $100,000 to the Trust Account. On April 11, 2013, the Los Angeles Office of the Federal Bureau of Investigations sent a wire transfer of $50,000 to the Trust Account. On May 8, 2013, the Los Angeles Police Foundation mailed a check in the amount of $201,000 to the Trust Account, which was deposited on May 10, 2013. In accordance with the three-judge panel's decision, RWG distributed the reward money in the percentages allocated on May 10, 2013.

On June 12, 2013, the Los Angeles Police Foundation issued another check in the amount of $185,000 to the Trust Account. On June 24, 2013, RWG distributed the reward money in the percentages allocated in the three-judge panel's decision. On March 18, 2014, the Los Angeles Police Foundation issued a final check in the amount of $25,000 to the Trust Account. RWG made the third distribution of the reward money on April 1, 2014 in the percentages set forth in the three-judge panel's decision. A total of $561,000 was distributed by RWG from the Trust Account to the reward recipients identified per the three-judge panel's decision.

2. Discussion

"'The elements of a cause of action for breach of fiduciary duty are: (1) existence of a fiduciary duty; (2) breach of the fiduciary duty; and (3) damage proximately caused by the breach.' [Citation.]" (*Gutierrez v. Girardi* (2011) 194 Cal.App.4th 925, 932.) Whether a breach of duty has occurred is a question of

fact; whether a legal duty exists, and if so, the scope of that duty, are questions of law. (*Kirschner Brothers Oil, Inc. v. Natomas Co.* (1986) 185 Cal.App.3d 784, 790.) "'[B]efore a person can be charged with a fiduciary obligation, he must either knowingly undertake to act on behalf and for the benefit of another, or must enter into a relationship which imposes that undertaking as a matter of law.' [Citation.] 'A fiduciary relationship is "'any relation existing between parties to a transaction wherein one of the parties is in duty bound to act with the utmost good faith for the benefit of the other party. Such a relation ordinarily arises where a confidence is reposed by one person in the integrity of another, and in such a relation the party in whom the confidence is reposed, if he voluntarily accepts or assumes to accept the confidence, can take no advantage from his acts relating to the interest of the party without the latter's knowledge or consent. . . .'" [Citations.]' [Citation.]" (*Los Angeles Memorial Coliseum Com. v. Insomniac, Inc.* (2015) 233 Cal.App.4th 803, 833-834.)

RWG argues plaintiff is not a beneficiary to the Trust Account because he chose not to participate in the Procedures. Alternatively, assuming plaintiff is a beneficiary and RWG owed him a fiduciary duty, RWG could only distribute the reward money from the Trust Account pursuant to the three-judge panel's decision, which it did. RWG has met its initial burden of production. The undisputed facts are that RWG created the Trust Account for the purpose of distributing reward money deposited in it by various entities, pursuant to the three-judge panel's decision as described in the subsequently issued Procedures. Furthermore, under the terms of the Procedures, RWG was required to distribute the reward money in the Trust

Account pursuant to the three-judge panel's decision. As noted, the three-judge panel's decision indicated plaintiff should receive nothing for his failure to submit a claim pursuant to the Procedures.

The burden shifts to plaintiff to present evidence that there are triable issues of material fact for his breach of fiduciary duty claim. (§ 437c, subd. (p)(2).) Plaintiff asserts the Procedures do not form the basis of a trust. Plaintiff alleged in his second amended complaint that "[o]n April 5, 2013, [RWG] were named trustees of the [Trust Account]. They were appointed to hold in trust monies distributed to the Trust Account for the purpose of equitably distributing the Dorner Investigation reward monies." If plaintiff is asserting the Procedures were not a trust agreement, then it is unclear what fiduciary duty RWG owed to plaintiff. RWG being appointed trustee of the Trust Account does not demonstrate how plaintiff is a beneficiary under the Trust Account. Again, the undisputed facts are: RWG through executive director Chiang created the Trust Account on March 28, 2013; the purpose of the Trust Account was to receive donations made by entities that would later be distributed by RWG in accordance with the three-judge panel's decision; RWG distributed the reward money that was donated to the Trust Account pursuant to the three-judge panel's decision. There could be a triable issue as to whether RWG owed a fiduciary duty to claimants who participated in the Procedures and entities that donated money to the Trust Account. Plaintiff is neither.

Plaintiff asserts that he is entitled to the reward money in the Trust Account, but his only basis for entitlement is that he purportedly provided information leading to Dorner's apprehension. Plaintiff has failed to raise a triable issue

disputing the fact that the reward money in the Trust Account was to be distributed pursuant to the three-judge panel's decision under the Procedures. Since plaintiff failed to submit a claim under the Procedures, plaintiff has failed to demonstrate that RWG owed him a fiduciary duty as to the Trust Account's reward money. Plaintiff fails to raise any triable issue of material fact demonstrating a breach of fiduciary duty.

RWG asserted that because the breach of fiduciary duty claim fails, the declaratory relief claim likewise fails. RWG has met its burden of production. The declaratory relief claim is premised on the breach of fiduciary duty claim. Plaintiff fails to raise a triable issue demonstrating the existence of an actual controversy.

There are no triable issues of material fact as to any of plaintiff's claims. RWG is entitled to summary judgment as a matter of law.

Because we have found in favor of the judgment as indicated above, we need not decide the parties' remaining arguments. (*Palermo v. Stockton Theatres, Inc.* (1948) 32 Cal.2d 53, 65; *Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 259.)

IV. DISPOSITION

The judgment is affirmed. Defendants the City of Los Angeles, the City of Irvine, the County of Riverside, and the law firm Richards, Watson & Gershon shall recover their appellate costs from plaintiff Richard Heltebrake.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

RAPHAEL, J.*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.