

Richard J. Chivaro (SBN 124391)
 OFFICE OF THE STATE CONTROLLER
 300 Capitol Mall, Suite 1850
 Sacramento, California 95814
 Telephone: (916) 445-6854
 Facsimile: (916) 322-1220
 Email: rchivaro@sco.ca.gov

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 to Gov. Code § 6103

Steven S. Rosenthal (SBN 109739)
 Marc S. Cohen (SBN 65486)
 Julie A. Belezzuoli (SBN 267302)
 KAYE SCHOLER LLP
 1999 Avenue of the Stars, Suite 1700
 Los Angeles, California 90067
 Telephone: (310) 788-1000
 Facsimile: (310) 788-1200
 Email: srosenthal@kayescholer.com
 mcohen@kayescholer.com
 julie.belezzuoli@kayescholer.com

Attorneys for Plaintiffs, JOHN CHIANG,
 in his official capacity as CONTROLLER OF
 THE STATE OF CALIFORNIA; and the OFFICE
 OF THE STATE CONTROLLER

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SACRAMENTO**

JOHN CHIANG, in his official capacity as
 CONTROLLER OF THE STATE OF
 CALIFORNIA; and the OFFICE
 OF THE STATE CONTROLLER;

Plaintiffs,

v.

THRIVENT FINANCIAL FOR
 LUTHERANS, a Wisconsin Corporation;
 and DOES 1-25, inclusive;

Defendants.

CASE NO.

**VERIFIED COMPLAINT FOR INJUNCTIVE
 RELIEF TO PROHIBIT CONTINUED
 VIOLATION OF CALIFORNIA'S
 UNCLAIMED PROPERTY LAW [Cal. Code
 Civ. Proc. §§ 1571, 1572]**

**Exempt from Fees
 (Gov. Code § 6103)**

DEPARTMENT _____

1 Pursuant to California Code of Civil Procedure sections 1571 and 1572, Plaintiffs John
2 Chiang, in his official capacity as Controller of the State of California, and the Office of the State
3 Controller, on behalf of the State of California (hereinafter "State Controller" or the "Controller" or
4 "Plaintiffs"), complain and allege as follows:

5 INTRODUCTION

6 1. There have been longstanding practices in the life insurance industry whereby
7 companies are unlawfully and intentionally retaining life insurance benefits long after an insured is
8 deceased. These practices have not just resulted in substantial delays in payments to beneficiaries
9 of life insurance products, they have also resulted in beneficiaries failing to receive any payment at
10 all of amounts to which they are entitled by reason of an insured's death. Through this conduct,
11 these companies have illegally retained funds, collected interest and increased profits to the
12 detriment of the beneficiaries and the public.

13 2. Moreover, in addition to failing to pay beneficiaries amounts to which they are
14 entitled, there have been longstanding practices in the life insurance industry whereby companies
15 are unlawfully and intentionally retaining unclaimed life insurance and annuity proceeds which are
16 required by law to be escheated to the State of California (hereinafter the "State") if a beneficiary
17 cannot be located, pursuant to California's Unclaimed Property Law, Cal. Code Civ. Proc. § 1500,
18 *et seq.* (hereinafter "UPL").

19 3. As just one example of how these practices could lead to the failure to escheat life
20 insurance proceeds under the UPL, anti-forfeiture provisions of life insurance policies provide that
21 the cash values built up in life insurance policies automatically be used to pay premiums when due
22 and unpaid. Where an insured is deceased and, thus, fails to pay policy premiums when due, the
23 cash value in the policy may be entirely depleted over time if the insurance company never learns
24 of the death of an insured. With the cash value entirely depleted, the policy lapses and the
25 company may never report the cash values that were due and payable under the UPL.

26 4. In order to investigate these practices and other potential non-compliance by life
27 insurance companies with the UPL, in 2008 the Controller, acting pursuant to his statutory

1 authority, began a series of audits of the life insurance industry. Audits have been instituted with
2 respect to over forty (40) companies that have sold life insurance and annuity products in the
3 United States and that may have unreported escheatable property.

4 5. In order to ease the cost and resource burdens of these audits both upon the
5 Controller and the life insurance companies subject to the audit, the Controller is using third-party
6 auditors who perform combined audits on behalf of a number of states. The use of combined
7 audits not only lessens cost and resource burdens, but also in the Controller's experience, results in
8 more accurate and comprehensive audits. California, therefore, is likely to recover greater amounts
9 of escheatable property where it engages in combined multi-state audits in which the auditor has
10 access to, and audits, all of a company's files.

11 6. In August 2012, multiple states retained Kelmar Associates LLC (hereinafter
12 "Kelmar") as a third-party auditor to conduct unclaimed property audits of Thrivent Financial for
13 Lutherans and all relevant subsidiaries, affiliates, and divisions (hereinafter "Thrivent"), as part of
14 a unified audit. Since then, additional states have joined the audit, also retaining Kelmar as their
15 third-party auditor. California became a participating state in the unified unclaimed property audit
16 of Thrivent on or about August 14, 2013. Like the other participating states, California retained
17 Kelmar to conduct the audit on behalf of California.

18 7. The Controller has reason to believe, and in some instances direct knowledge of,
19 unreported unclaimed property amounts being retained by the insurance industry. This belief is
20 based upon, *inter alia*, the race-based premium settlements entered into by insurance companies in
21 the early 2000s, which disclosed failures to report escheatable property, and recent investigative
22 hearings in which insurance company executives testified under oath regarding failures to pay life
23 insurance proceeds after notice of an insured's death. This reasonable belief is also shared by the
24 treasurers and controllers of numerous other states who have initiated similar audits, and uncovered
25 unreported unclaimed property in the form of life insurance proceeds that should have been
26 escheated to the state. Based upon this information obtained from the industry and the allegations
27 set forth below, the Controller has reason to believe that there may be instances in which an insured

1 is deceased but Thrivent has failed to pay beneficiaries and/or report and escheat unclaimed
2 property that should have been reported pursuant to California's UPL. *See* Cal. Code Civ. Proc. §
3 1571(a).

4 8. Accordingly, in connection with the multi-state unclaimed property audit, Kelmar
5 has served Thrivent with multiple requests for data and information relating to their life insurance
6 and annuity policies pursuant to California Code of Civil Procedure section 1571(a), and has
7 attempted to hold an opening conference to proceed with its examination of Thrivent's records.
8 Despite Kelmar's multiple requests and efforts, Thrivent has failed to produce any information
9 responsive to the requests and has prevented an opening conference from being held in connection
10 with the ongoing unclaimed property audit. Instead, for more than fourteen months, Thrivent has
11 engaged in a sequence of concerted efforts to forestall and undermine the progress of the audit.
12 More specifically, Thrivent has (i) failed to submit to a full and complete examination of its books
13 and records as required by California Code of Civil Procedure section 1571, (ii) engaged in dilatory
14 and obstructive actions to delay and impede the timely completion of the Controller's unclaimed
15 property audit, and (iii) asserted positions in open defiance of the Controller's right to be provided
16 access to necessary data and/or information to complete the audit.

17 9. The Controller and his third party auditor have been unable to conduct their
18 unclaimed property audit of Thrivent as a result of this conduct, and have been prevented from
19 identifying amounts that are required to be paid to the State Treasury through escheatment under
20 California Code of Civil Procedure section 1515(a).

21 10. Furthermore, the State, and the people of the State, have suffered and continue to
22 suffer significant harm because the Controller has been, and continues to be, deprived of the ability
23 to complete a lawful audit for the purpose of identifying and returning unclaimed insurance and
24 annuity proceeds to the rightful owners pursuant to section 1531 of the California Code of Civil
25 Procedure as a result of Thrivent's conduct and its failure to submit to a full and complete
26 examination. Additionally, the State, and the people of the State, have suffered and continue to
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1 suffer significant harm by being deprived of the beneficial use of unclaimed funds if beneficiaries
2 cannot be located.

3 **PARTIES**

4 11. Plaintiff John Chiang is the Controller of the State of California. The Controller, a
5 constitutional officer, is the chief fiscal officer of California, charged with “superintend[ing] the
6 fiscal concerns of the state.” *See* Cal. Gov’t Code § 12410; Cal. Const. art. V, § 11.

7 12. The Controller may “at reasonable times and upon reasonable notice examine the
8 records of any person if the Controller has reason to believe that the person is a holder who has
9 failed to report [unclaimed] property that should have been reported” pursuant to California’s UPL.
10 *See* Cal. Code Civ. Proc. § 1571(a). The Controller is empowered to adopt policies and procedures
11 governing the examination of records and to hire a third-party auditor to conduct the audit. *See id.*
12 § 1571(c).

13 13. The Controller also has the responsibility to “enforce the duty of any person under
14 [California’s UPL] to permit the examination of the records of such person.” *See id.* § 1572(a).

15 14. The Controller is informed, believes, and thereon alleges that Thrivent is a
16 Wisconsin corporation headquartered in Appleton, Wisconsin, with its principal place of business
17 at 4321 North Ballard Road, Appleton, Wisconsin 54919, and that Thrivent conducts substantial
18 business throughout California and the United States. Founded in 1902, Thrivent is a fraternal
19 benefit society with nearly 2.5 million members, including more than 106,000 in California. On
20 information and belief, Thrivent issues life insurance policies and annuity contracts throughout the
21 United States, including California, and currently has more than 2,166,000 in-force life insurance
22 policies. In 2012, Thrivent, a Fortune 500 company, realized more than \$500 million in net income
23 and more than \$8.3 billion in total revenue.¹

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26 ¹ *See* the Thrivent website. Annual Report to Members (2012), available at
27 <https://www.thrivent.com/aboutus/files/25012_13.pdf>.

1 15. The Controller is presently unaware of the true names and capacities, whether
2 individual, corporate, associate or otherwise, of Defendant DOES 1 through 25, inclusive (together
3 with Thrivent, "Defendants"). Such fictitious Defendants are sued pursuant to the provisions of
4 California Code of Civil Procedure section 474. If the exact nature and identity of such fictitious
5 Defendants' responsibility for, participation in, and contribution to the matters and things herein
6 alleged is ascertained by the Controller, the Controller will seek to amend this Complaint and all
7 proceedings to set forth the same. The Controller is informed and believes, and on that
8 basis alleges, that each DOE Defendant was in some manner responsible for, participated in, or
9 contributed to the acts alleged herein.

10 16. At all times mentioned herein, all Defendants DOES were the agents, servants,
11 employees, representatives, affiliates, subsidiaries, partners, or principals of each of the remaining
12 Defendants and were at all times acting within the scope of such agency, service, and employment
13 and directed, consented, ratified, permitted, encouraged and approved the acts of each remaining
14 Defendant.

15 **JURISDICTION AND VENUE**

16 17. This Court has jurisdiction over all causes of action in this Complaint.

17 18. This action is brought by John Chiang, in his official capacity as Controller of the
18 State of California, on behalf of the State of California. Any revenue collected by reason of the
19 audit of insurance companies is payable into the Treasury of the State of California.

20 19. Venue is proper in this Court pursuant to California Code of Civil Procedure section
21 1572(b), which permits the State Controller to bring an action in any court of this State of
22 appropriate jurisdiction, against a holder of unclaimed property, where the holder is any person
23 engaged in or transacting business in this State, although not domiciled in this state. Thrivent is
24 engaged in and conducts substantial business throughout the State.

25 20. Venue is also proper in this Court pursuant to California Code of Civil Procedure
26 section 1572(a), which permits the State Controller to bring an action to enforce the duty of any
27 person under this chapter to permit the examination of the records of such person in any court of

1 appropriate jurisdiction of the State if the holder of the unclaimed property is “engaged in or
2 transacting business in this state, although not domiciled in this state.” Thrivent is engaged in and
3 conducts substantial business throughout the State.

4 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

5 **A. THE CONTROLLER INITIATES AN AUDIT OF INSURANCE**
6 **COMPANIES TO IDENTIFY PROPERTY THAT HAS ESCHEATED TO**
7 **THE STATE.**

8 21. Hundreds of millions of dollars in life insurance proceeds go unclaimed each year.
9 This is often because beneficiaries of these policies do not know the proceeds are due to them. The
10 National Association of Insurance Commissioners estimates that unpaid life insurance benefits
11 exceed \$1 billion nationwide.

12 22. In response to this problem, the Controller has initiated audits of a substantial
13 number of insurance companies, and expanded the scope of already-pending audits of multiple
14 insurance companies, to determine the insurance industry’s compliance with the State’s UPL.
15 Audits have been instituted with respect to over forty (40) companies, including Thrivent, that have
16 sold life insurance and annuity products in the United States, and that may have potential
17 unreported escheatable property.

18 23. The Controller initiated these audits as part of a coordinated multi-state
19 investigation to determine whether insurance companies, including Thrivent, have unlawfully and
20 intentionally retained life insurance benefits long after an insured is deceased, and are violating the
21 State’s UPL by failing to report and escheat unclaimed property in their possession to the State.

22 24. The Controller’s investigation of the insurance industry has also focused on the
23 payment of death benefits for life insurance and annuity policies. The investigation analyzed
24 whether there had been insufficient analysis of dormant accounts, inadequate cross-checking with
25 government databases listing the deceased, and other circumstances where policy beneficiaries did
26 not receive payment in connection with a policy owner’s death.

1 25. Insurance companies, including Thrivent, have a variety of sources available to
2 them by which they can determine whether policyholders are deceased. Some of these sources
3 include:

- 4 (a) Information contained in and derived from publically available or online databases,
5 including the Death Master File maintained by the United States Social Security
6 Administration;
7 (b) Calls or letters from relatives or representatives of the decedent;
8 (c) Results of searches performed for new addresses of customers following the receipt
9 of returned mail; and
10 (d) Claims filed and death certificates received in connection with other policies or
11 contracts to which a deceased insured is a party.

12 26. The Controller authorized the audit of Thrivent in part due to concern that
13 Defendants lacked adequate policies and procedures for the identification of unclaimed death
14 benefits requiring escheatment.

15 27. Thrivent claims that it “welcome[s]” the audit and “shares the Controller’s interest
16 in the audit moving forward in a timely manner.”² Yet Thrivent has engaged in a sequence of
17 dilatory and obstructive efforts over the course of fourteen months to impede and undermine the
18 progress of the unified audit.

19 28. First, Thrivent engaged in protracted negotiations with Kelmar over a nondisclosure
20 agreement (hereinafter “NDA”) for six months, thus delaying the commencement of the audit, only
21 to suddenly, unilaterally disengage from the talks just days after Kelmar agreed to include certain
22 provisions in the NDA that Thrivent had insisted be included.

23 29. Second, after abruptly ending discussions with Kelmar regarding an NDA despite
24 extended and “promising” negotiations over the course of six months, Thrivent initiated a series of

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26 ² Letter from David L. Westmark to Steven S. Rosenthal at 4 (September 30, 2013) (hereinafter
27 “Thrivent’s September 30, 2013 Letter”), attached hereto as Exhibit 1.

meetings with state treasurers' offices, followed by a letter-writing campaign to state officials, in an attempt to persuade the states to withdraw from the audit.³ Thrivent asserted that it should not be subject to the audits because it is "distinguishable" from other insurance entities and is "confident" in its internal compliance processes, which it believes to be "exemplary" and "highly effective" in ensuring that benefits are promptly paid to beneficiaries.⁴ Thrivent also levied a series of legal questions in its letters, indicating that satisfactory responses from the states were preconditions to its compliance with the audits.

30. The Controller is under no obligation to rely on Thrivent's unilateral, self-serving statements and assumptions regarding the likelihood of finding unclaimed property on its books and records. Thrivent, like other insurance entities, may not obstruct the Controller's audit based solely on its own representations regarding its compliance systems and processes. Moreover, the Controller is entitled to audit Thrivent, without precondition.

B. THE CONTROLLER HAS THE RIGHT, PURSUANT TO THE UPL, TO EXAMINE INSURANCE COMPANIES, INCLUDING THRIVENT, AND TO ENFORCE THOSE EXAMINATIONS.

31. Under California law, the Controller may at reasonable times and upon reasonable notice examine the records of any insurance company if the Controller has reason to believe that the company is a holder of unclaimed property that should have been reported pursuant to California's UPL. *See* Cal. Code Civ. Proc. § 1571(a). "The standard to be applied for testing the underlying basis of the [Controller's] reason to believe (or reasonable belief) that any person has failed to comply with the [a]ct is no stricter than that which the U.S. Supreme Court applies in cases where the administrative agency seeks a search warrant to inspect a regulated business for

³ The Controller is informed that two states and the District of Columbia have, in fact, withdrawn.

⁴ *See, e.g.*, Letter from David L. Westmark to Catherine A. Provencher, New Hampshire State Treasurer at 2, 6 (May 8, 2013), attached hereto as Exhibit 2 (hereinafter the "New Hampshire Letter"); Letter from David L. Westmark to John A. Gabriel, Director, Unclaimed Property Division, Tennessee Treasury Department at 2, 6 (May 23, 2013), attached hereto as Exhibit 3.

1 compliance with governing statutes and regulations . . . ‘Probable cause in the criminal law sense is
 2 not required . . .’” *Lincoln Bank & Trust Co. v. Oklahoma Tax Comm’n*, 827 P.2d 1314, 1322
 3 (Okla. 1992) (quoting *Marshall v. Barlow’s, Inc.*, 436 U.S. 307, 320-21 (1978)) (emphasis
 4 removed). Evidence that “‘noncompliance’ with the requirements of the [u]nclaimed [p]roperty
 5 [a]ct is ‘widespread’ . . .” is sufficient to meet this standard. *Id.* at 1323. Moreover, pursuant to
 6 this authority, there are no time limitations on the period to be covered by an audit and no
 7 limitations on the documents of a property holder than can be audited, so long as there is a
 8 possibility that the records or information may lead to the discovery of reportable property.

9 32. The Controller’s authority to audit Thrivent is undisputed. Thrivent has repeatedly
 10 insisted that it does not challenge the Controller’s authority to conduct this audit. *See, e.g.*,
 11 Thrivent’s September 30, 2013 Letter in response to the September Demand Letter, Ex. 1.
 12 Thrivent has also, on multiple occasions, conceded that it is a possibility that Thrivent is holding
 13 property that should have been reported to the State. For example, in a January 16, 2013 letter to
 14 the State Controller’s Office, Thrivent stated:

15 Even though Thrivent believes it is in compliance, *it recognizes the possibility*
 16 *(especially with mergers/acquisitions) that a review of its processes, procedures*
 17 *and records may elicit property which had not been previously identified and*
 18 *should have been reported to the state.*

19 January 16, 2013 Letter from David Westmark (emphasis added), a true and correct copy of which
 20 is attached hereto as Exhibit 4. Pursuant to California Code of Civil Procedure section 1572(a)(1),
 21 the Controller may bring an action in a court of appropriate jurisdiction to “enforce the duty of any
 22 person under [California’s UPL] to permit the examination of the records of such person.”

23 33. There is no limitation on the time in which an action may be brought by the
 24 Controller to enforce the provisions of California’s UPL. *See* Cal. Code Civ. Proc. § 1570 (“The
 25 expiration of any period of time specified by statute or court order, during which an action or
 26 proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of
 27 property from the holder, does not prevent [unclaimed] money or property from being escheated,
 28 *nor affect any duty to file a report . . . or to pay or deliver escheated property to the State*

1 Controller.”) (emphasis added); *Bank of America v. Cory*, 164 Cal. App. 3d 66, 76 (1985)
2 (concluding that action brought by Controller to recover funds subject to California’s UPL is not
3 time barred).

4
5 **C. THRIVENT HAS FAILED TO PERMIT A LAWFUL EXAMINATION OF ITS RECORDS.**

6 34. Beginning in August 2012, several states retained Kelmar as a third-party auditor to
7 conduct unclaimed property audits of Thrivent as part of a unified audit. California joined the
8 unified unclaimed property audit of Thrivent on or about August 14, 2013 and retained Kelmar as
9 its third-party auditor.

10 35. On or about August 31, 2012, in pursuance of the unclaimed property audit, Kelmar
11 sent Thrivent an e-mail regarding the unclaimed property examination. Attached to the August 31,
12 2012 e-mail was a draft NDA. Attached as Exhibits 5 and 6, respectively, are true and correct
13 copies of the August 31, 2012 e-mail and the draft NDA.

14 36. On or about October 8, 2012, in pursuance of the unclaimed property audit, Kelmar
15 sent Thrivent an e-mail requesting that Thrivent provide dates in October or November of 2012 for
16 an opening conference to facilitate the commencement of the audit. Attached to the October 8,
17 2012 e-mail was Kelmar’s Document Request 1 (hereinafter the “LI-DR1”). The LI-DR1 set forth
18 information that Kelmar required from Thrivent in order to conduct the unclaimed property audit.
19 More than a year later, Thrivent has failed to attend an opening conference and has failed to
20 produce any information required by the LI-DR1. Attached hereto as Exhibits 7 and 8,
21 respectively, are true and correct copies of the October 8, 2012 e-mail and a true and correct copy
22 of the LI-DR1.

23 37. After six months of protracted negotiations regarding an NDA, and despite
24 Kelmar’s repeated attempts to follow up with Thrivent to accommodate Thrivent’s demands
25 regarding the NDA, Thrivent suddenly and unilaterally disengaged from the talks. The Controller
26 believes and thereon alleges that Thrivent’s refusal to agree to the NDA was a tactic to stall and
27 obstruct the multi-state audit.

1 38. Thrivent also refused to comply with Kelmar's data requests. In fact, Thrivent
2 initiated a multi-pronged campaign to challenge the multistate audit by urging states to rescind
3 their audit authorizations. In or around early March, 2013, Thrivent began approaching
4 representatives of certain states in an attempt to persuade those states to withdraw from the audit.
5 The Controller is informed, believes, and thereon alleges that Thrivent met in-person with various
6 representatives as part of this effort, and subsequently sent a number of letters challenging the
7 states' authority and the propriety of the audits. In a number of letters, Thrivent asserted that its
8 compliance was contingent upon receipt of satisfactory explanations regarding the states' authority
9 to audit.

10 39. For example, on or around May 2, 2013, Thrivent met with the State Treasurer of
11 New Hampshire and followed-up on that meeting with the May 8, 2013 New Hampshire Letter
12 (Ex. 2). Among other things, the New Hampshire Letter called on the treasurer to provide a legal
13 opinion from the state *in advance of the audit commencing*. In addition, in a letter sent to Florida's
14 Department of Financial Services on or about April 22, 2013 (hereinafter the "Florida Letter"),
15 Thrivent raised similar challenges, and stated that it would be prepared to commence the audit "as
16 soon as these issues are resolved." Attached hereto as Exhibit 9 is a true and correct copy of the
17 Florida Letter.

18 40. On or about September 4, 2013, Thrivent sent a letter to the California State
19 Controller's Office requesting the opportunity to discuss Keane Unclaimed Property Consulting
20 and Advisory Services' analysis of Thrivent's unclaimed property procedures and reporting
21 compliance. In this letter, Thrivent stated its belief that an audit of its books and records was
22 unnecessary. Thrivent also asserted that, if the Controller wished to proceed, Thrivent would seek
23 various legal clarifications before commencing the audit. Attached hereto as Exhibit 10 is a true
24 and correct copy of Thrivent's September 4, 2013 letter.

25 41. On or about September 23, 2013, in pursuance of the unified audit on behalf of the
26 participating states, Kelmar sent Thrivent an e-mail stating that (1) the unclaimed property
27 examination must commence, (2) the company must provide dates for an opening conference to
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1 facilitate the commencement of the audit, (3) the company must provide the information requested
2 in the October 8, 2012 LI-DR1 no later than October 31, 2013, and (4) a second document request
3 (hereinafter the "LI-DR2") would be forthcoming. Attached hereto as Exhibit 11 is a true and
4 correct copy of Kelmar's September 23, 2013 e-mail.

5 42. On September 23, 2013, counsel for the Controller sent a letter to Thrivent
6 (hereinafter the "September Demand Letter") in response to Thrivent's September 4, 2013 letter.
7 Specifically, counsel for the Controller notified Thrivent that California Code of Civil Procedure
8 section 1571 provides the Controller with the authority to conduct an audit covering the records
9 and information being sought from Thrivent, that Thrivent was obligated to comply with the
10 Controller's audit in a timely manner, and that the State of California does not consider Thrivent to
11 be in compliance with the audit if there is any condition attached to Thrivent's agreement to attend
12 an opening conference and proceed with the audit in a timely manner. The September Demand
13 Letter required Thrivent to take the following actions:

- 14 (a) Thrivent shall agree forthwith, and in any event no later than September 30, 2013, to
15 attend an opening conference for the unclaimed property audit being conducted by
16 California as part of a multi-state unified audit. The conference shall take place at
17 the office of Thrivent at a date and time mutually convenient to Thrivent and
18 Kelmar, but in no event shall the opening conference occur later than October 31,
19 2013. Thrivent shall signify its compliance with this demand by return letter,
20 stating its agreement to attend the opening conference and the date and time on
21 which the opening conference will take place. Such letter shall be delivered by
22 email no later than 5:00 PM CDT on September 30, 2013.
- 23 (b) Thrivent shall provide the specified information requested by Kelmar in its LI-DR1
24 no later than 5:00 PM CDT on October 31, 2013. Such information shall be
25 delivered to Kelmar in the manner requested or as mutually agreed with Michael
26 Gizzi of Kelmar.

- 1 (c) Thrivent shall not take actions that have the effect of delaying or impeding the
2 timely completion of the unclaimed property audit. Without limitation, this requires
3 Thrivent to respond promptly to all questions asked by Kelmar in pursuance of the
4 audit process, to provide Kelmar prompt access to personnel with personal and
5 direct knowledge on matters of inquiry, and to provide data and information in a
6 form reasonably calculated to be auditable.

7 Attached hereto as Exhibit 12 is a true and correct copy of the September Demand Letter.

8 43. On or about September 30, 2013, Thrivent responded to the September Demand
9 Letter with a communication that, among other things, asserted that (1) Thrivent was unaware of an
10 effort by Kelmar to schedule an opening conference in November 2012; (2) Thrivent believed that
11 the Controller had received inaccurate and misleading information from the Controller's auditor;
12 (3) Kelmar was responsible for the delay of the commencement of the audit; (4) Thrivent's failure
13 to respond to Kelmar's prior communications was not an attempt to stall the audit; and (5) Thrivent
14 had concerns about the Controller's third-party auditor. *See* Ex. 1.

15 44. On or about September 30, 2013, Thrivent sent an email to Kelmar in which
16 Thrivent confirmed its agreement to attend an opening conference in Thrivent's offices in
17 Appleton, Wisconsin by October 31, 2013. Attached hereto as Exhibit 13 is a true and correct copy
18 of Thrivent's September 30, 2013 e-mail.

19 45. On or about October 2, 2013, Kelmar, in pursuance of the audit, issued its second
20 document request, the LI-DR2, to Thrivent, with all responses due by November 15, 2013.

21 Attached hereto as Exhibit 14 is a true and correct copy of the LI-DR2.

22 46. On or about October 29, 2013, Thrivent sent an email to Kelmar agreeing to sign the
23 NDA in its then-current form. However, to date, Thrivent has failed to execute an NDA. Attached
24 hereto as Exhibit 15 is a true and correct copy of the October 29, 2013 email.

25 47. On or about October 30, 2013, Thrivent sent an email to Kelmar cancelling the
26 opening conference scheduled to take place the following day. Attached hereto as Exhibit 16 is a
27 true and correct copy of the October 30, 2013 email.

1 48. The purpose of the audit is to allow the State to review all potentially escheatable
2 property. Nonetheless, Thrivent is depriving the State of the ability to review Thrivent's records to
3 identify escheatable property. Thrivent is not entitled to unilaterally decide what information they
4 deem relevant to the Controller's unclaimed property audit.

5 49. The very purpose of the audit is to review Thrivent's data and underlying records to
6 ensure that Thrivent has not (i) failed to pay beneficiaries of life insurance products and (ii) failed
7 to identify and report unclaimed property that should have been reported and remitted to the State.

8 50. For example, upon review of policy files in connection with unclaimed property
9 audits, California's auditors often discover (separate and apart from the Death Master File
10 matching process) that a company's files contain enough information – either returned mail, a call
11 or letter from a relative of a deceased policy holder, or a partially filed claim, etc. – to indicate that
12 the company (i) knew or should have known that a policy holder was deceased; (ii) should have
13 taken reasonable steps to promptly investigate and process claims, as required by California
14 Insurance Code sections 790.03(h)(3) and (5); and/or (iii) was obligated in accordance with
15 California's UPL to escheat funds to the State if the beneficiary could not be located. *See* Cal.
16 Code. Civ. Proc. § 1515(a). Moreover, the Controller is entitled to audit a company's entire policy
17 database to ensure that the company is complying with the limiting age requirements set forth in
18 California Code of Civil Procedure section 1515(c).

19 51. Additionally, the scope of the Controller's audit of Thrivent is substantially the
20 same as the audits that have been instituted with respect to over forty other insurance companies
21 that have sold life insurance and annuity products in the United States. Furthermore, to date, the
22 Controller has conducted audits and reached global settlement agreements with eighteen of the
23 largest insurance companies in the United States — which collectively hold 51% of the total policy
24 values of individual life policies nationwide and 43% of the total number of individual life policies
25 nationwide. The scope of the Controller's audit of Thrivent is substantially the same as the audits
26 conducted of these eighteen insurance companies.

1 52. Thrivent failed to attend an opening conference and failed to produce any responses
2 to the data requests from Kelmar. The deadlines articulated by the Controller's representatives
3 have come and gone. Thrivent simply refuses to comply with the requests posed by the State's
4 auditor for information required to complete a full and timely audit, thereby preventing the
5 Controller from undertaking a complete and lawful audit of Thrivent. Moreover, Thrivent is
6 refusing to provide policy data requested by the Controller, asserting that the company has already
7 made its own evaluations regarding the reportability of such policies, as well as made its own
8 determinations as to what information is relevant to the Controller's audit.

9
10 **D. THE EFFECTS OF THRIVENT'S FAILURE TO COMPLY WITH THE
11 AUDIT.**

12 53. Thrivent's failure to timely comply with all data requests from the Controller and
13 his representatives has delayed and impeded the timely completion of the multistate unclaimed
14 property audit being conducted of Thrivent. As a result of this delay, the Controller has been
15 unable to fully determine the following:

- 16 (a) Whether, after receiving information suggesting the possibility of an insured's death,
17 Thrivent has failed to use this information to notify beneficiaries of proceeds that
18 might be due to them and to escheat proceeds to the State when beneficiaries cannot
19 be located;
- 20 (b) Whether Thrivent has used the built-up cash value of insurance policies to continue to
21 pay premiums to themselves even after receiving information suggesting the
22 possibility of an insured's death;
- 23 (c) Whether Thrivent has adequate procedures in place to use publicly available sources
24 to learn of information suggesting the possibility of an insured's death, thereby
25 preventing Thrivent from retaining funds that are due to beneficiaries and to the State
26 when beneficiaries cannot be located; and
27

- 1 (d) Whether Thrivent has adequate policies and procedures in place for the identification
2 of unclaimed death benefits that require escheatment, specifically in regard to
3 determining whether a policy has reached the limiting age.

4 54. Thrivent's failure to comply with the Controller's unclaimed property audit has
5 prevented the Controller from identifying funds that are required to be paid to the State Treasury
6 through escheatment under California Code of Civil Procedure section 1515(a). As a result, the
7 State, and the people of the State, have suffered and continue to suffer significant damage by being
8 deprived of the beneficial use of those unclaimed insurance proceeds.

9 55. Moreover, as a result of Thrivent's wrongful conduct described above, which has
10 prevented the Controller from identifying funds that are required to be escheated to the State,
11 Thrivent is preventing the Controller from listing, and preventing citizens from easily locating,
12 these unclaimed funds on the Controller's unclaimed property website, located at:

13 <https://scoweb.sco.ca.gov/UCP/Default.aspx>

14 56. The Controller's unclaimed property website easily allows beneficiaries, and the
15 public at large, to locate unclaimed property that has already been sent to the State for safekeeping,
16 as well as property that is about to be sent to the State by a business as required by law. Thrivent's
17 wrongful conduct, described above, is also preventing the Controller from utilizing other vehicles
18 for informing beneficiaries of the availability of escheated funds, such as the due diligence
19 mailings and publications required by California Code of Civil Procedure section 1531. These
20 methods of publicizing the availability of unclaimed funds have a high likelihood of actually
21 reaching beneficiaries entitled to unclaimed life insurance and annuity proceeds.

22 57. The Controller now seeks to prohibit Thrivent from continuing to violate
23 California's UPL and enforce the duty of Thrivent to permit the full, complete, and timely
24 examination of its records pursuant to California Code of Civil Procedure sections 1571 and 1572,
25 and other applicable provisions of the UPL, by requiring Thrivent to:

- 1 (a) Provide full, complete, and accurate responses to all data requests from the
- 2 Controller and his representatives, including, but not limited to, LI-DR1 and LI-
- 3 DR2;
- 4 (b) Provide prompt access to the Controller and his representatives to personnel with
- 5 personal and direct knowledge on matters of inquiry;
- 6 (c) Respond promptly to all questions asked by Kelmar in pursuance of the audit
- 7 process; and
- 8 (d) Provide data and information in a form reasonably calculated to be auditable.

9
10 **FIRST CAUSE OF ACTION**

11 **INJUNCTIVE RELIEF TO PROHIBIT CONTINUED VIOLATION OF THE UPL**

12 **(Cal. Code Civ. Proc. §§ 1571, 1572)**

13 **(By Plaintiffs Against All Defendants Including Does 1-25, Inclusive)**

14 58. Plaintiffs repeat and reallege paragraphs 1 through 57 inclusive, and incorporate the
15 same as if set forth herein at length.

16 59. The State, and the people of the State, have a property interest in the unclaimed life
17 insurance and annuity proceeds that Thrivent has illegally retained in violation of California's
18 UPL. The Controller has a duty to examine the records of Thrivent whenever the Controller has
19 reason to believe, as alleged above, that it may have failed to report unclaimed property that should
20 have been reported to the Controller pursuant to section 1530(b)(2) of the California Code of Civil
21 Procedure. Furthermore, the Controller has a duty to identify and return unclaimed insurance
22 proceeds to the rightful owner pursuant to section 1531 of the California Code of Civil Procedure.
23 Accordingly, the Controller has a high likelihood of success on the merits of this case.

24 60. Beginning on or about February 27, 2013 and continuing to the present time,
25 Defendants, and each of them, have wrongfully and unlawfully refused to submit to the full,
26 complete and timely audit of their records, have failed to provide complete responses to requests
27 for data and information from the Controller and his representatives in connection with the audit,

1 and have engaged in dilatory and obstructive actions that have impeded the timely completion of
2 the audit.

3 61. On or about September 23, 2013, the Controller's auditor notified Defendants of
4 their failure to submit to a full, complete, and timely examination of their records in connection
5 with the unclaimed property audit and demanded that Defendants stop their wrongful conduct
6 described above. Defendants, and each of them, have refused and still refuse to refrain from
7 wrongful conduct and permit a full, complete and timely examination of their records in
8 accordance with California Code of Civil Procedure section 1571(a).

9 62. Defendants' wrongful conduct, unless and until enjoined and restrained by order of
10 this Court, will cause irreparable injury to the State of California, and the people of the State, by
11 delaying the Controller's efforts in identifying unclaimed insurance and annuity proceeds which
12 are required to be paid to the State Treasury through escheatment under California Code of Civil
13 Procedure section 1515(a).

14 63. Further, Defendants' wrongful conduct, unless and until enjoined and restrained by
15 order of this Court, will cause irreparable injury to the State, and the people of the State, by (i)
16 depriving the Controller of the opportunity to timely identify and attempt to return unclaimed
17 insurance and annuity proceeds to the rightful owners pursuant to section 1531 of the California
18 Code of Civil Procedure, and (ii) depriving the State, and the people of the State, from receiving
19 the beneficial use of unclaimed insurance proceeds.

20 64. Defendants' wrongful conduct, unless and until enjoined and restrained by order of
21 this Court, will also cause irreparable injury to the State, and the people of the State, by preventing
22 the Controller from identifying funds that are required to be escheated to the State, thus preventing
23 the Controller from listing, and preventing citizens from easily locating, these unclaimed life
24 insurance and annuity proceeds on the Controller's unclaimed property web-site.

25 65. Moreover, Defendants' wrongful conduct, unless and until enjoined and restrained
26 by order of this Court, will cause irreparable injury to the State, and the people of the State, by
27 preventing the Controller from utilizing other vehicles for informing beneficiaries of the

1 availability of escheated funds, such as the due diligence mailings and publications required by
2 California Code of Civil Procedure section 1531. These methods of publicizing the availability of
3 unclaimed funds have a high likelihood of actually reaching beneficiaries entitled to unclaimed life
4 insurance and annuity proceeds.

5 66. The State, and the people of the State, have no plain, adequate, or speedy remedy at
6 law for Defendants' wrongful conduct.

7 67. In accordance with California Code of Civil Procedure section 1572(a)(1), the
8 Controller now seeks to prohibit Thrivent from continuing to violate the UPL by enforcing the duty
9 of Defendants to permit the examination of their records pursuant to California Code of Civil
10 Procedure section 1571(a).

11 68. The facts and circumstances of this case warrant not only permanent injunctive
12 relief, but also preliminary injunctive relief under California Code of Civil Procedure section 527.

13 **PRAYER FOR RELIEF**

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

16 1. For preliminary and permanent injunctive relief prohibiting Defendants from
17 continuing to violate California's UPL by requiring Defendants, and each of them, and their agents,
18 servants, and employees, and all persons acting under, in concert with, or for Defendants, to:

- 19 (d) Permit a full, complete and timely examination of all Defendants' books and records
20 pursuant to California Code of Civil Procedure sections 1571 and 1572, and all
21 other applicable provisions of California's UPL;
- 22 (e) Provide full, complete and accurate responses to all data requests from the
23 Controller and his representatives, including, but not limited to, LI-DR1 and LI-
24 DR2 from Kelmar;
- 25 (f) Provide prompt access to personnel with personal and direct knowledge on matters
26 of inquiry;
- 27 (g) Respond promptly to all questions asked in pursuance of the audit process;

- 1 (h) Provide data and information in a form reasonably calculated to be auditable; and
2 (i) Confirm that all policies and procedures currently in effect by which Defendants
3 identify, report, and pay over death and annuity benefits that require escheatment by
4 operation of law have been produced, and to provide any such documents that have
5 not been produced to Kelmar.
- 6 2. For all costs of suit and fees, including reasonable attorneys' fees as appropriate;
7 3. For all damages and penalties due to the State, including all penalties due under
8 applicable provisions of California's UPL; and
9 4. For any other relief this Court deems just, proper and equitable.

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2 Dated: November 4, 2013
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Respectfully submitted,

OFFICE OF THE STATE CONTROLLER

By: _____

5 Richard J. Chivaro (SBN 124391)
6 300 Capitol Mall, Suite 1850
7 Sacramento, California 95814
8 Telephone: (916) 445-6854
9 Facsimile: (916) 322-1220
10 Email: rchivaro@sco.ca.gov

KAYE SCHOLER LLP

11 Steven S. Rosenthal (SBN 109739)
12 Marc S. Cohen (SBN 65486)
13 Julie A. Belezzuoli (SBN 267302)
14 KAYE SCHOLER LLP
15 1999 Avenue of the Stars, Suite 1700
16 Los Angeles, California 90067
17 Telephone: (310) 788-1000
18 Facsimile: (310) 788-1200
19 Email: srosenthal@kayescholer.com
20 mcohen@kayescholer.com
21 julie.belezzuoli@kayescholer.com

22 Attorneys for Plaintiffs, JOHN CHIANG,
23 in his official capacity as CONTROLLER OF
24 THE STATE OF CALIFORNIA; and the
25 OFFICE OF THE STATE CONTROLLER
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27
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VERIFICATION
STATE OF CALIFORNIA

I have read the foregoing **VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF TO PROHIBIT CONTINUED VIOLATION OF CALIFORNIA'S UNCLAIMED PROPERTY LAW [Cal. Code Civ. Proc. §§ 1571, 1572]** and know its contents.

 X I am employed in the Office of the State Controller as Chief of the Division of Audits for Plaintiffs, John Chiang, in his official capacity as Controller of the State of California, and the Office of the State Controller. I am involved with the day to day management and coordination of the audit of Thrivent Financial for Lutherans and all relevant subsidiaries, affiliates, and divisions on behalf of the Office of the State Controller. The matters stated in the foregoing document are true of my own knowledge based upon personal participation or examination of original documents and copies of original documents I believe to be true and correct, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed in Sacramento, California on November 4, 2013.

Jeff Brownfield

(Signature)