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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.)

KEMPER CORPORATION (formerly)
UNITRIN, INC.), a Delaware)
Corporation; MUTUAL SAVINGS LIFE)
INSURANCE COMPANY, an Alabama)
Corporation; RELIABLE LIFE)
INSURANCE COMPANY, an Oklahoma)
Corporation; RESERVE NATIONAL)
INSURANCE COMPANY, a Missouri)
Corporation; UNION NATIONAL LIFE)
INSURANCE COMPANY, a Louisiana)
Corporation; UNITED INSURANCE)
COMPANY OF AMERICA, an Illinois)
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 as well in beneficiaries failing to receive any
10 payment at all of amounts to which they are entitled by reason of an insured’s death. Through this
11 conduct, these companies have illegally retained funds, collected interest and increased profits to
12 the 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 (the “State”), if a beneficiary cannot be
17 located, pursuant to California’s Unclaimed Property Law, Cal. Code Civ. Proc. § 1500, et seq.
18 (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. On or about August 19, 2011, an unclaimed property audit of Kemper Corporation
12 (formerly Unitrin, Inc.), Mutual Savings Life Insurance Company, Reliable Life Insurance
13 Company, Reserve National Insurance Company, Union National Life Insurance Company, United
14 Insurance Company of America and all of the relevant subsidiaries, affiliates, and divisions of
15 each, (collectively, the "Kemper Insurance Companies") was commenced as part of a unified audit
16 which included multiple participating states. The participating states retained Verus Financial LLC
17 (hereinafter "Verus") as the third-party auditor. California joined the unified unclaimed property
18 audit of the Kemper Insurance Companies on or about November 21, 2011, and also retained Verus
19 to conduct the audits on behalf of California.

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

1 escheated to the state. Based upon this information obtained from the industry, and the allegations
2 set forth below, the Controller has reason to believe that the Kemper Insurance Companies are
3 aware of instances in which an insured is deceased, but have failed to pay beneficiaries and/or
4 report and escheat unclaimed property that should have been reported pursuant to California's
5 UPL. *See* Cal. Code Civ. Proc. § 1571(a).

6 8. Accordingly, in connection with the Controller's unclaimed property audit, Verus
7 has served Defendants with multiple requests for data and information relating to their life
8 insurance and annuity policies pursuant to California Code of Civil Procedure section 1571(a).
9 However, despite these multiple requests, the Kemper Insurance Companies have refused to
10 provide necessary information responsive to a number of requests issued in connection with the on-
11 going unclaimed property audit. More specifically, the Kemper Insurance Companies have (i)
12 failed to submit to a full and complete examination of their books and records as required by
13 California Code of Civil Procedure section 1571, (ii) engaged in dilatory and obstructive actions to
14 delay and impede the timely completion of the Controller's unclaimed property audit, and (iii)
15 asserted that the Controller will not be given access to necessary data and/or information to
16 complete the audit.

17 9. The Controller and his third party auditor have been unable to conduct their
18 unclaimed property audit of the Kemper Insurance Companies as a result of this conduct, and have
19 been prevented from identifying in a timely manner amounts that are required to be paid to the
20 State Treasury through escheatment under 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 the Kemper Insurance Companies' conduct and their failure to permit a full
26 and complete examination. Additionally the State, and the people of the State, have suffered and
27

1 continue to suffer significant harm by being deprived of the beneficial use of unclaimed funds if
2 beneficiaries 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* Cal.
12 Code Civ. Proc. § 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* Cal. Code Civ.
15 Proc. § 1572(a).

16 14. The Controller is informed, believes, and thereon alleges that the Kemper
17 Corporation (formerly Unitrin, Inc.), is a Delaware Corporation, headquartered in Missouri, with its
18 principal place of business at 12115 Lackland Road, St. Louis, Missouri 63146, and that the Kemper
19 Corporation conducts substantial business throughout California and the United States. The Kemper
20 Corporation, with over \$8 billion in assets, boasts itself as one of the nation's leading financial
21 service providers.¹ The Kemper Corporation family of companies specializes in property and
22 casualty insurance and life and health insurance products for individuals, families, and small
23 businesses. The Kemper Corporation sells insurance in forty-two (42) states, as well as the District
24 of Columbia, and has more than six million policyholders. The Kemper Corporation is the parent
25

26 ¹ *See* the Kemper Corporation website. “Quick Facts, Kemper at a Glance.” *Kemper*. Web. 09 July 2013.
27 <<http://www.kemper.com/wps/portal/Kemper/Home/AboutKemper/QuickFacts/>>.

1 company of Mutual Savings Life Insurance Company, Reliable Life Insurance Company, Reserve
2 National Insurance Company, Union National Life Insurance Company and United Insurance
3 Company of America.

4 15. The Controller is informed, believes, and thereon alleges that Mutual Savings Life
5 Insurance Company is an Alabama Corporation, headquartered in Missouri, with its principal
6 place of business at 12115 Lackland Road, St. Louis, Missouri 63146, and that Mutual Savings
7 Life Insurance Company conducts substantial business throughout California and the United States.
8 Mutual Savings Life Insurance Company provides life insurance products and other insurance
9 products to individuals and businesses. Mutual Savings Life Insurance Company is a subsidiary of
10 the Kemper Corporation.

11 16. The Controller is informed, believes, and thereon alleges that Reliable Life Insurance
12 Company is an Oklahoma Corporation, headquartered in Oklahoma, with its principal place of
13 business at 601 East Britton Road, Oklahoma City, Oklahoma 73114, and that Reliable Life
14 Insurance Company conducts substantial business throughout California and the United States.
15 Reliable Life Insurance Company is a specialty life insurer, focused on manufacturing and
16 administering customized, private-label products for distributors of travel, life, child accident,
17 disability and health insurance. Reliable Life Insurance Company is a subsidiary of the Kemper
18 Corporation.

19 17. The Controller is informed, believes, and thereon alleges that Reserve National
20 Insurance Company is a Missouri Corporation, headquartered in Missouri, with its principal place
21 of business at 12115 Lackland Road, St. Louis, Missouri 63146, and that Reserve National
22 Insurance Company conducts substantial business throughout California and the United States.
23 Reserve National Insurance Company is an accident, life and health insurance carrier, as well as an
24 insurance agent and broker of life insurance. Reserve National Insurance Company is a subsidiary
25 of the Kemper Corporation.

26 18. The Controller is informed, believes, and thereon alleges that Union National Life
27 Insurance Company is a Louisiana Corporation, headquartered in Missouri, with its principal place

1 of business at 12115 Lackland Road, St. Louis, Missouri 63146, and that Union National Life
2 Insurance Company conducts substantial business throughout California and the United States.
3 Union National Life Insurance Company provides life insurance and other insurance products to
4 individuals and businesses. Union National Life Insurance Company is a subsidiary of the Kemper
5 Corporation.

6 19. The Controller is informed, believes, and thereon alleges that United Insurance
7 Company of America is an Illinois Corporation, headquartered in Missouri, with its principal place
8 of business at 12115 Lackland Road, St. Louis, Missouri 63146, and that United Insurance
9 Company of America conducts substantial business throughout California and the United States.
10 United Insurance Company of America offers a complete line of life, fire, and accident and health
11 insurance products through more than fifty (50) district offices and over 1,400 field employees
12 across the Midwest, mid-Atlantic and Southeastern states as well as California. United Insurance
13 Company of America is a subsidiary of the Kemper Corporation.

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

23 21. At all times mentioned herein, all Defendants DOES were the agents, servants,
24 employees, representatives, affiliates, subsidiaries, partners or principals of each of the remaining
25 Defendants and were at all times acting within the scope of such agency, service, and employment
26 and directed, consented, ratified, permitted, encouraged and approved the acts of each remaining
27 Defendant.

JURISDICTION AND VENUE

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

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

24. Venue is proper in this Court pursuant to California Code of Civil Procedure section 1572(b), which permits the State Controller to bring an action in any court of this State of appropriate jurisdiction, against a holder of unclaimed property, where the holder is any person engaged in or transacting business in this State, although not domiciled in this state. The Kemper Insurance Companies are engaged in and conduct substantial business throughout the State.

25. Venue is also proper in this Court pursuant to California Code of Civil Procedure section 1572(a), which permits the State Controller to bring an action to enforce the duty of any person under this chapter to permit the examination of the records of such person in any court of appropriate jurisdiction of the State if the holder of the unclaimed property is “engaged in or transacting business in this state, although not domiciled in this state.” The Kemper Insurance Companies are engaged in and conduct substantial business throughout the State.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

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

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

27. In response to this problem, the Controller has initiated the audit of a substantial number of insurance companies and expanded the scope of already-pending audits of multiple insurance companies, including the Kemper Insurance Companies, to determine the insurance industry’s compliance with the State’s UPL. Audits have been instituted with respect to over forty

1 (40) companies that have sold life insurance and annuity products in the United States, and that may
2 have potential unreported escheatable property.

3 28. The Controller initiated these audits as part of a coordinated multistate investigation
4 to determine whether insurance companies, including the Kemper Insurance Companies, have
5 unlawfully and intentionally retained life insurance benefits long after an insured is deceased, and
6 are violating the State's UPL by failing to report and escheat unclaimed property in their possession
7 to the State.

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

13 30. Insurance companies, including the Kemper Insurance Companies, have a variety of
14 sources available to them by which they can determine whether policyholders are deceased. Some
15 of these sources include:

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

24 31. The Death Master File is a national file of death information maintained by the
25 United States Social Security Administration. The Death Master File contains information on over
26 eighty-seven million deaths derived from the Social Security Administration's records. The Death
27 Master File includes the following information for each decedent, if such information is available:

1 social security number, name, date of birth and date of death. The Death Master File can be
2 accessed in a variety of ways by insurers, including through online databases.

3 32. In June 2008, the Office of the Inspector General of the Social Security
4 Administration released results of its analysis finding that the Death Master File is approximately
5 99.5 percent accurate. *See* Office of the Inspector General, SSA, *Personally Identifiable Information*
6 *Made Available to the Public via the Death Master File*, A-06-08-18042 (June 2008) (the “2008
7 Audit Report”). Attached hereto as Exhibit 1 is a true and correct copy of the 2008 Audit Report.

8 33. In July 2008, Bill Gray, then Deputy Commissioner of the Systems Social Security
9 Administration, testified before Congress that the Death Master File is approximately 99.5 percent
10 accurate and is not easily susceptible to fraud. *See* Social Security Testimony Before Congress,
11 *Statement of Bill Gray, Deputy Commissioner of System Social Security Administration, Testimony*
12 *before the Permanent Subcommittee on Investigations of the Senate Committee on Homeland*
13 *Security and Governmental Affairs on Medicare Payments for Claims with Identification Numbers*
14 *of Dead Doctors*, (July 9, 2008) (“July 2008 Congressional Testimony of Bill Gray”). Attached
15 hereto as Exhibit 2 is a true and correct copy of the July 2008 Congressional Testimony of Bill
16 Gray.

17 34. The reliability of the Death Master File was further established by Presidential
18 Memorandum, 75 Federal Register pages 5953 - 54 (June 18, 2010), whereby President Obama
19 required that federal agencies check the Death Master File prior to making payments to individuals.
20 Additionally, the Congressional Budget Office has relied upon the Death Master File for federal
21 budget estimates as the most comprehensive database of death information.

22 35. The Controller’s audit of the Kemper Insurance Companies was initiated in part due
23 to concern that Defendants lacked adequate policies and procedures for the identification of
24 unclaimed death benefits requiring escheatment.

1 **B. THE CONTROLLER HAS THE RIGHT TO EXAMINE INSURANCE**
2 **COMPANIES PURSUANT TO THE UPL, AND THE RIGHT TO ENFORCE**
3 **THOSE EXAMINATIONS.**

4 36. Under California law, the Controller may at reasonable times and upon reasonable
5 notice examine the records of any insurance company if the Controller has reason to believe that the
6 company is a holder of unclaimed property that should have been reported pursuant to California's
7 UPL. *See* Cal. Code Civ. Proc. § 1571(a). "The standard to be applied for testing the underlying
8 basis of the [Controller's] reason to believe (or reasonable belief) that any person has failed to
9 comply with the [a]ct is no stricter than that which the U.S. Supreme Court applies in cases where
10 the administrative agency seeks a search warrant to inspect a regulated business for compliance with
11 governing statutes and regulations . . . 'Probable cause in the criminal law sense is not required . . .'"
12 *Lincoln Bank & Trust Co. v. Oklahoma Tax Comm'n*, 827 P.2d 1314, 1322 (Okla. 1992) (quoting
13 *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 320-21 (1978)) (emphasis removed). Evidence that
14 "'noncompliance' with the requirements of the [u]nclaimed [p]roperty [a]ct is 'widespread' . . ." is
15 sufficient to meet this standard. *Id.* at 1323. Moreover, pursuant to this authority, there are no time
16 limitations on the period to be covered by an audit and no limitations on the documents of a property
17 holder than can be audited, so long as there is a possibility that the records or information will lead
18 to the discovery of reportable property.

19 37. Pursuant to California Code of Civil Procedure section 1572(a)(1), the Controller
20 may bring an action in a court of appropriate jurisdiction to "enforce the duty of any person under
21 [California's UPL] to permit the examination of the records of such person." *Id.*

22 38. There is no limitation on the time in which an action may be brought by the
23 Controller to enforce the provisions of California's UPL. *See* Cal. Code Civ. Proc. § 1570 ("The
24 expiration of any period of time specified by statute or court order, during which an action or
25 proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of
26 property from the holder, does not prevent [unclaimed] money or property from being escheated,
27 *nor affect any duty to file a report . . . or to pay or deliver escheated property to the State*
28 *Controller.*") (emphasis added); *Bank of America v. Cory*, 164 Cal. App. 3d 66, 76 (1985)

1 (concluding that action brought by Controller to recover funds subject to California's UPL is not
2 time barred).

3
4 **C. THE KEMPER INSURANCE COMPANIES HAVE FAILED TO PERMIT A
5 FULL AND COMPLETE EXAMINATION OF THEIR RECORDS.**

6 39. On or about August 19, 2011, an unclaimed property audit of the Kemper Insurance
7 Companies was commenced as part of a unified audit which included multiple participating states.
8 Verus was retained as the third-party auditor. California joined the unified unclaimed property audit
9 of the Kemper Insurance Companies on or about November 21, 2011, and also retained Verus as its
10 third-party auditor.

11 40. On or about October 12, 2011, in pursuance of the unclaimed property audit, Verus
12 had a teleconference with the Kemper Insurance Companies regarding the unclaimed property
13 examination that Verus had been authorized to conduct on behalf of the participating states to
14 examine Defendants' books and records. On or about October 14, 2011, Verus sent a follow up
15 letter to the Kemper Insurance Companies regarding the unclaimed property examination, setting
16 forth the scope and guidelines of the examination.

17 41. On or about May 3, 2012, in pursuance of the unclaimed property audit, Verus served
18 the Kemper Insurance Companies with Request No. 6 for "Individual Life Data." This "Request"
19 consists of a number of subpart "questions" that the company is required to answer. To date, after
20 over a year, the Kemper Insurance Companies have refused to produce a vast majority of the
21 information required in Request No. 6. Attached hereto as Exhibit 3 is a true and correct copy of
22 "Request No. 6: Individual Life Data."

23 42. On or about June 29, 2012, counsel for the Kemper Insurance Companies sent a letter
24 in response to Verus' Request No. 6, refusing to provide any data responsive to Questions 1-5 and 7,
25 which called for administrative system data concerning the Kemper Insurance Companies' policies
26 in force at any time during the period of the audit. In this letter, the Kemper Insurance Companies
27 asserted that the requested information was not relevant to the Controller's unclaimed property audit,
28 despite the Controller's express authority to audit such information pursuant to California Code of

1 Civil Procedure section 1571(a). Attached hereto as Exhibit 4 is a true and correct copy of
2 Defendants' June 29, 2012 letter.

3 43. More specifically, when Verus confirmed that it intended to run the data produced
4 in response to Questions 1-5 and 7 of Request No. 6 against the Death Master File, the Kemper
5 Insurance Companies "objected to Verus undertaking any comparison of the Kemper companies'
6 individual policyholder information against the [Death Master File] as part of its unclaimed
7 property examination." See Exhibit 4, Defendants' June 29, 2012 letter, attached hereto.

8 44. On or about July 17, 2012, Verus sent a response to counsel for Defendants
9 addressing Defendants' June 29, 2012 letter. Verus informed Defendants that the positions
10 asserted in their June 29, 2012 letter regarding the relevance of information requested were
11 incorrect. Furthermore, Verus informed Defendants that it disagreed with multiple other
12 statements contained in the June 29, 2012 letter, including (i) those regarding the extent of the
13 Kemper Insurance Companies' obligations to escheat unclaimed property and the operation of the
14 dormancy period with respect to unclaimed death benefits, and (ii) the suggestion that producing
15 the requested information somehow could result in a violation of the Kemper Insurance
16 Companies' federal or state constitutional rights. Verus also informed Defendants' that the data
17 and information sought in Request No. 6 appropriately falls within the authority of the participating
18 states to review Defendants' books and records in order to determine whether Defendants are in
19 possession of unclaimed property. Attached hereto as Exhibit 5 is a true and correct copy of
20 Verus' July 17, 2012 response letter.

21 45. However, in order to avoid further unnecessary delay, in its July 17, 2012 response
22 Verus also informed Defendants that it was prepared to accept the limited information Defendants
23 indicated they were willing to produce in response to Question 6 of Request No. 6 (pertaining to
24 individual life policy claims that have been or are in the process of being settled). However, this
25 acceptance was without waiver of Verus' right to request, on behalf of the participating states, that
26 Defendants produce the other information called for by Request No. 6 at a later time. Verus also
27 informed Defendants that if they could not agree on the scope of the information to be produced

1 and/or if the Kemper Insurance Companies remained unwilling to produce information that Verus
2 determined was necessary for the audit to be completed, Verus would be required to inform the
3 participating states.

4 46. On or about August 14, 2012, the Kemper Insurance Companies provided Verus
5 with the alternative data they had agreed to produce in response to Question 6 of Request No. 6
6 (pertaining to individual life policy claims that have been or are in the process of being settled).
7 However, the August 14, 2012 production was incomplete and extremely limited. Specifically, the
8 data provided contains no information regarding the insured, such as date of birth, date of death,
9 Social Security number, name or address.

10 47. On or about September 7, 2012, Verus sent a letter to counsel for the Kemper
11 Insurance Companies regarding the August 14, 2012 data production. Verus informed Defendants
12 that the information produced was incomplete, and Verus requested that the Kemper Insurance
13 Companies produce a revised data set with the insured's information by September 28, 2012.
14 Attached hereto as Exhibit 6 is a true and correct copy of Verus' September 7, 2012 demand letter.

15 48. On or about October 9, 2012, counsel for Defendants replied to Verus' September 7,
16 2012 demand letter. In response to Verus' inquiry as to why requested information had been
17 withheld, the Kemper Insurance Companies asserted that they would not provide information
18 regarding the insured's Social Security number or date of birth on the basis that such information
19 was not relevant to the Controller's unclaimed property audit. Attached hereto as Exhibit 7 is a
20 true and correct copy of Defendants' October 9, 2012 letter.

21 49. On or about January 8, 2013, Verus served the Kemper Insurance Companies with
22 Request No. 9 entitled "Race-Based Underwriting Settlements," requesting information and
23 documents regarding settlements that the Kemper Insurance Companies previously had entered
24 into regarding race-based premium underwriting practices. Attached hereto as Exhibit 8 is a true
25 and correct copy of "Request No. 9: Race-Based Underwriting Settlements."

26 50. On or about January 28, 2013, counsel for the Kemper Insurance Companies sent an
27 email to Verus indicating that the Kemper Insurance Companies would be providing a response to

1 Request No. 9 in early March 2013. Attached hereto as Exhibit 9 is a true and correct copy of
2 Defendants' January 28, 2013 email. To date, Verus has not received a complete response from
3 Defendants to Request No. 9 in connection with the unclaimed property audit.

4 51. On or about June 28, 2013, Verus sent a demand letter to counsel for Defendants,
5 detailing that the Kemper Insurance Companies have (1) failed to produce information they
6 previously indicated they would provide and (2) refused to produce information that is necessary to
7 complete the audit. Accordingly, Verus requested that the Kemper Insurance Companies produce
8 complete responses to Requests Nos. 6 and 9 by July 12, 2013 and/or confirm that the Kemper
9 Insurance Companies intend to stand on their previous objections and refuse to provide complete
10 responses to Requests Nos. 6 and 9, so that Verus can inform the participating states. Attached
11 hereto as Exhibit 10 is a true and correct copy of Verus' June 28, 2013 demand letter.

12 52. On or about July 12, 2013, counsel for the Kemper Insurance Companies sent a
13 response letter in which Defendants memorialized in writing their position regarding their
14 continued refusal to provide all necessary data and information requested by Verus in order to
15 complete the audit. In particular, although the Kemper Insurance Companies agreed to provide
16 claims data, the Kemper Insurance Companies refused to produce "in-force" policies as called for
17 by Request No. 6 and/or provide complete responses to Request No. 9. Since the Kemper
18 Insurance Companies have refused to provide necessary records to California's auditor,
19 California's auditor remains unable to review Defendants' records to assess whether funds have, in
20 fact, become escheatable. Attached hereto as Exhibit 11 is a true and correct copy of Defendants'
21 July 12, 2013 letter.

22 53. The purpose of the audit is to allow the State to review all potentially escheatable
23 property. Nonetheless, the Kemper Insurance Companies are depriving the State of the ability to
24 review Defendants' records to identify escheatable property. The Kemper Insurance Companies
25 are not entitled to unilaterally decide what information they deem relevant to the Controller's
26 unclaimed property audit.

1 54. The very purpose of the audit is to review the Kemper Insurance Companies' data
2 and underlying records to ensure that Defendants have not (i) failed to pay beneficiaries of life
3 insurance products and (ii) failed to identify and report unclaimed property that should have been
4 reported and remitted to the State.

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

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

25 57. Defendants have, thus far, failed to produce final and complete responses to the data
26 requests from Verus, including Requests Nos. 6 and 9. The deadline of July 12, 2013, articulated
27 in the June 28, 2013 letter from the Controller's auditor, has come and gone. Nevertheless,

1 Defendants are still failing to comply with the requests posed by the State's auditor for information
2 required to complete a full and timely audit, thereby preventing the Controller from undertaking a
3 complete and lawful audit of the Kemper Insurance Companies. Moreover, Defendants are
4 refusing to provide policy data requested by the Controller, asserting that the companies have
5 already made their own evaluations regarding the reportability of such policies, as well as made
6 their own determinations as to what information is relevant to the Controller's audit.

7
8 **D. THE EFFECTS OF THE KEMPER INSURANCE COMPANIES' FAILURE TO COMPLY WITH THE AUDIT.**

9 58. The Kemper Insurance Companies failure to timely comply with all data requests
10 from the Controller and his representatives has delayed and impeded the timely completion of the
11 multistate unclaimed property audit being conducted of Defendants. As a result of this delay, the
12 Controller has been unable to fully determine the following:

- 13 (a) Whether, after receiving information suggesting the possibility of an insured's death,
14 the Kemper Insurance Companies have failed to use this information to notify
15 beneficiaries of proceeds that might be due to them and to escheat proceeds to the
16 State when beneficiaries cannot be located;
- 17 (b) Whether the Kemper Insurance Companies have used the built-up cash value of
18 insurance policies to continue to pay premiums to themselves even after receiving
19 information suggesting the possibility of an insured's death;
- 20 (c) Whether the Kemper Insurance Companies have adequate procedures in place to use
21 publicly available sources to learn of information suggesting the possibility of an
22 insured's death, thereby preventing the Kemper Insurance Companies from retaining
23 funds that are due to beneficiaries and to the State when beneficiaries cannot be
24 located; and
- 25 (d) Whether the Kemper Insurance Companies have adequate policies and procedures in
26 place for the identification of unclaimed death benefits that require escheatment,
27 specifically in regard to determining whether a policy has reached the limiting age.

- 1 (a) Provide full, complete and accurate responses to all data requests from the
 2 Controller and his representatives, including, but not limited to, Requests Nos. 6 and
 3 9 from Verus;
- 4 (b) Provide prompt access by the Controller and his representatives to personnel with
 5 personal and direct knowledge on matters of inquiry, respond promptly to all
 6 questions asked by Verus in pursuance of the audit process, and to provide data and
 7 information in a form reasonably calculated to be auditable; and
- 8 (c) Confirm that Defendants have produced all policies and procedures currently in
 9 effect by which the Kemper Insurance Companies identify, report, and pay over
 10 death and annuity benefits that require escheatment by operation of law.

11 **FIRST CAUSE OF ACTION**

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

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

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

15 63. Plaintiffs repeat and reallege paragraphs 1 through 62 inclusive, and incorporate the
 16 same as if set forth herein at length.

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

25 65. Beginning on or about June 2012, and continuing to the present time, Defendants,
 26 and each of them, have wrongfully and unlawfully refused to submit to the full, complete and
 27

1 timely audit of their records pursuant to California Code of Civil Procedure section 1571, have
2 failed to provide complete responses to requests for data and information from the Controller and
3 his representatives in connection with the audit, and have engaged in dilatory and obstructive
4 actions that have impeded the timely completion of the audit.

5 66. On or about June 28, 2013, the Controller's auditor notified Defendants of their
6 failure to submit to a full, complete, and timely examination of their records in connection with the
7 unclaimed property audit and demanded that Defendants stop their wrongful conduct described
8 above. As set forth in Defendants' July 12, 2013 letter, attached hereto as Exhibit 13, Defendants,
9 and each of them, have refused and still refuse to refrain from wrongful conduct and permit a full,
10 complete and timely examination of their records in accordance with California Code of Civil
11 Procedure Section 1571(a).

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

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

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

1 70. Moreover, Defendants’ wrongful conduct, unless and until enjoined and restrained
2 by order of this Court, will cause irreparable injury to the State, and the people of the State, by
3 preventing the Controller from utilizing other vehicles for informing beneficiaries of the
4 availability of escheated funds, such as the due diligence mailings and publications required by
5 California Code of Civil Procedure section 1531. These methods of publicizing the availability of
6 unclaimed funds have a high likelihood of actually reaching beneficiaries entitled to unclaimed life
7 insurance and annuity proceeds.

8 71. The State, and the people of the State, have no plain, adequate, or speedy remedy at
9 law for Defendants’ wrongful conduct.

10 72. In accordance with California Code of Civil Procedure section 1572(a)(1), the
11 Controller now seeks to prohibit the Kemper Insurance Companies from continuing to violate the
12 UPL by enforcing the duty of Defendants to permit the examination of their records pursuant to
13 California Code of Civil Procedure section 1571(a).

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

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Dated: July 16, 2013

Respectfully submitted,

OFFICE OF THE STATE CONTROLLER

By: _____

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

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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 Legal Counsel for Plaintiff, John Chiang, in his official capacity as Controller of the State of California and the Office of the State Controller. I have been tasked with primary responsibility for the day to day management and coordination of the audit of the Kemper Insurance Companies 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 July 16, 2013.

Richard Chivaro

(Signature)