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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.

AMERICAN NATIONAL INSURANCE )  
COMPANY, a Texas 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 \_\_\_\_\_**

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

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

5 **INTRODUCTION**

6 1. There have been longstanding practices in the life insurance industry whereby  
7 companies have failed to take reasonable steps to determine whether the insured under their life  
8 insurance and annuity products are deceased. As an example, companies have not made use of the  
9 United States Social Security Administration's Death Master File ("Death Master File") and other  
10 similar sources, which have been available for decades, as a basis for further inquiry as to whether  
11 an insured is deceased.

12 2. These practices in the life insurance industry have not just resulted in substantial  
13 delays in payments to beneficiaries of life insurance products, they have resulted as well in the  
14 failure of beneficiaries even to receive notice and payment of amounts to which they are entitled by  
15 reason of an insured's death. Further, these practices have resulted in both substantial delays in the  
16 escheatment of amounts due from the life insurance industry to the State of California (the "State"),  
17 and the failure to escheat such amounts to the State at all pursuant to California's Unclaimed  
18 Property Law, Cal. Code Civ. Proc. § 1500, et seq. (hereinafter "UPL").

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

1           4.       In order to investigate these practices and other potential non-compliance by life  
2 insurance companies with the UPL, in 2008 the Controller, acting pursuant to his statutory  
3 authority, began a series of audits of life insurance companies. Audits have been instituted with  
4 respect to over 40 companies that have sold life insurance and annuity products in the United States  
5 and that may have potential unreported escheatable property.

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

13           6.       On or about March 5, 2009, an unclaimed property audit of American National  
14 Insurance Company and all of its relevant subsidiaries, affiliates, and divisions (hereinafter  
15 "ANICO") was commenced as part of a unified audit which included multiple participating states.  
16 Xerox State and Local Solutions, Inc. d/b/a Xerox Unclaimed Property Clearinghouse (hereinafter  
17 "UPCH") was retained by the participating states as the third-party auditor. California joined the  
18 unified unclaimed property audit of ANICO on or about August 28, 2012, and also retained UPCH  
19 to conduct the audit on behalf of California. UPCH has served ANICO with requests for data and  
20 information relating to its life insurance and annuity policies pursuant to California Code of Civil  
21 Procedure section 1571(a).

22           7.       Despite multiple requests for data and information from the Controller's  
23 representatives pursuant to California Code of Civil Procedure section 1571(a), ANICO has  
24 (1) failed to submit to a full and complete examination of its books and records as required by law,  
25 (2) engaged in dilatory and obstructive actions to delay and impede the timely completion of the  
26 Controller's unclaimed property audit, (3) asserted that the Controller will not be given access to  
27 all necessary data and information to complete the audit without resorting to litigation, and (4)

1 refused to turn over data requested by California because it has made its own determination that  
2 such data will not lead to reportable property. More specifically, despite the fact that the audit was  
3 initially commenced against ANICO in March 2009 and joined by California in August 2012,  
4 ANICO has failed to produce all data responsive to a number of requests that were clearly laid out  
5 by UPCH. Instead, on or about January 21, 2013, after receiving demands from UPCH and the  
6 Controller's counsel, ANICO provided UPCH with a production of incomplete, selective, and  
7 largely duplicative data. Moreover, in response to follow-up requests from UPCH, ANICO has  
8 asserted that currently "in-force policies" are not subject to the Controller's audit and that such data  
9 would not be produced. ANICO's dilatory and obstructive actions have significantly impeded the  
10 Controller's audit.

11 8. As a result of this conduct and ANICO's failure to permit a full and complete  
12 examination, the Controller and his third party auditor have been unable to conduct their unclaimed  
13 property audit of ANICO in a timely manner, and have been prevented from identifying in a timely  
14 manner amounts that are required to be paid to the State Treasury through escheatment under  
15 California Code of Civil Procedure section 1515(a).

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

#### 24 PARTIES

25 10. Plaintiff John Chiang is the Controller of the State of California. The Controller, a  
26 constitutional officer, is the chief fiscal officer of California, charged with "superintend[ing] the  
27 fiscal concerns of the state." *See* Cal. Gov't Code § 12410; Cal. Const. art. V, § 11.

1           11.     The Controller may “at reasonable times and upon reasonable notice examine the  
2 records of any person if the Controller has reason to believe that the person is a holder who has  
3 failed to report [unclaimed] property that should have been reported” pursuant to California’s  
4 Unclaimed Property Law, Cal. Code Civ. Proc. § 1500, et seq. *See* Cal. Code Civ. Proc. § 1571(a).  
5 The Controller is empowered to adopt policies and procedures governing the examination of records  
6 and to hire a third party auditor to conduct the audit. *See* Cal. Code Civ. Proc. § 1571(c).

7           12.     The Controller also has the responsibility to “enforce the duty of any person under  
8 [California’s UPL] to permit the examination of the records of such person.” *See* Cal. Code Civ.  
9 Proc. § 1572.

10          13.     The Controller is informed, believes, and thereon alleges that ANICO is a Texas  
11 Corporation, with its principal place of business at One Moody Plaza, Galveston, Texas 77550, and  
12 that ANICO conducts substantial business throughout California and the United States. ANICO  
13 offers a wide array of insurance products and services including life insurance, annuities, accident  
14 and health insurance, property and casualty insurance, credit insurance, and pension plan services.  
15 ANICO’s products are distributed through career agents, independent marketing organizations, and  
16 multiple line exclusive agents, as well as direct distribution channels. ANICO has multiple  
17 subsidiaries, and the Controller is informed, believes, and thereon alleges that the company and its  
18 subsidiaries operate in all fifty (50) U.S. states, the District of Columbia, Puerto Rico, and American  
19 Samoa.

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

1 alleged herein.

2 15. At all times mentioned herein, all Defendants DOES were the agents, servants,  
3 employees, representatives, affiliates, subsidiaries, partners or principals of each of the remaining  
4 Defendants and were at all times acting within the scope of such agency, service, and employment  
5 and directed, consented, ratified, permitted, encouraged and approved the acts of each remaining  
6 Defendant.

7 **JURISDICTION AND VENUE**

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

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

12 18. Venue is also proper in this Court pursuant to California Code of Civil Procedure  
13 section 1572(a), which permits the State Controller to bring an action to enforce the duty of any  
14 person under this chapter to permit the examination of the records of such person in any court of  
15 appropriate jurisdiction of the State if the holder of the unclaimed property is "engaged in or  
16 transacting business in this state, although not domiciled in this state." ANICO is engaged in and  
17 conducts substantial business throughout the State.

18 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

19  
20 **A. THE CONTROLLER INITIATES AN AUDIT OF INSURANCE**  
21 **COMPANIES TO IDENTIFY PROPERTY THAT HAS ESCHEATED TO**  
22 **THE STATE.**

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

27 20. In response to this problem, the Controller has initiated the audit of a substantial  
28 number of insurance companies and expanded the scope of already-pending audits of multiple

1 insurance companies, including ANICO, to determine the insurance industry's compliance with the  
2 State's unclaimed property laws.

3 21. The Controller initiated these audits as part of a coordinated multistate investigation  
4 to determine whether insurance companies, including ANICO, have violated unclaimed property  
5 laws by failing to adopt and implement procedures that would timely determine whether  
6 policyholders are deceased, and either pay beneficiaries, or, if beneficiaries are not located, escheat  
7 the funds to the State.

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

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

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

22 24. The Death Master File is a national file of death information maintained by the  
23 United States Social Security Administration. The Death Master File contains information on over  
24 eighty-seven million deaths derived from the Social Security Administration's records. The Death  
25 Master File includes the following information for each decedent, if such information is available:  
26 social security number, name, date of birth, date of death, state or country of residence, ZIP code of  
27 last residence, and ZIP code to which a lump sum death benefit was sent, if applicable. The Death

1 Master File can be accessed in a variety of ways by insurers, including through online databases.

2 25. In June 2008, the Office of the Inspector General of the Social Security  
3 Administration released results of its analysis finding that the Death Master File is approximately  
4 99.5 percent accurate. In July 2008, Bill Gray, then Deputy Commissioner of the Systems Social  
5 Security Administration, testified before Congress that the Death Master File is approximately 99.5  
6 percent accurate and is not easily susceptible to fraud.

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

12 27. The Controller's audit of ANICO was initiated in part due to concerns that the  
13 company lacked adequate policies and procedures for the identification of unclaimed death benefits  
14 requiring escheatment.

15  
16 **B. THE CONTROLLER HAS THE RIGHT TO EXAMINE INSURANCE**  
17 **COMPANIES PURSUANT TO THE UPL, AND THE RIGHT TO ENFORCE**  
18 **THOSE EXAMINATIONS.**

19 28. Under California law, the Controller may at reasonable times and upon reasonable  
20 notice examine the records of any insurance company if the Controller has reason to believe that the  
21 company is a holder of unclaimed property that should have been reported pursuant to California's  
22 UPL. *See* Cal. Code Civ. Proc. § 1571(a). The existence of such reason to believe is a matter  
23 committed to the judgment of the Controller and is not judicially reviewable.

24 29. Pursuant to California Code of Civil Procedure section 1572(a)(1), the Controller  
25 may bring an action in a court of appropriate jurisdiction to "enforce the duty of any person under  
26 [California's UPL] to permit the examination of the records of such person." *See* Cal. Code Civ.  
27 Proc. § 1572.



1           30.     There is no limitation on the time in which an action may be brought by the  
2 Controller to enforce the provisions of California's UPL. *See* California Code of Civil Procedure  
3 § 1570 ("The expiration of any period of time specified by statute or court order, during which an  
4 action or proceeding may be commenced or enforced to obtain payment of a claim for money or  
5 recovery of property from the holder, does not prevent [unclaimed] money or property from being  
6 escheated, *nor affect any duty to file a report . . .* or to pay or deliver escheated property to the  
7 State Controller.") (emphasis added); *Bank of America v. Cory*, 164 Cal. App. 3d 66, 76 (1985)  
8 (concluding that action brought by Controller to recover funds subject to California's UPL is not  
9 time barred).

10           **C.     ANICO HAS FAILED TO PERMIT A FULL AND COMPLETE**  
11           **EXAMINATION OF ITS RECORDS.**

12           31.     On or about March 5, 2009, an unclaimed property audit of ANICO was commenced  
13 as part of a unified audit which included multiple participating states. UPCH was retained as the  
14 third-party auditor. California joined the unified unclaimed property audit of ANICO on or about  
15 August 28, 2012, and also retained UPCH as its third-party auditor.

16           32.     On or about June 20, 2012, in pursuance of the unclaimed property audit, UPCH  
17 transmitted to ANICO a document setting forth UPCH's Death Master File audit procedures (the  
18 "Audit Procedures Document"). The Audit Procedures Document set forth information that UPCH  
19 required from ANICO in order to conduct the Death Master File audit. Attached hereto as Exhibit 1  
20 is a true and correct copy of the Audit Procedures Document.

21           33.     On or about August 1, 2012, in pursuance of the unclaimed property audit, UPCH  
22 transmitted to ANICO a document requesting additional data and information UPCH needed to  
23 conduct the audit (the "Requested Fields Document"). Attached hereto as Exhibit 2 is a true and  
24 correct copy of the Requested Fields Document.

25           34.     On or about November 7, 2012, a meeting took place between ANICO and UPCH  
26 regarding the audit. During this meeting, ANICO informed UPCH that it would not comply with  
27 pending audit requests until it was provided with the following information for the thirty-seven

1 (37) states participating in the unified unclaimed property audit: (1) legal, statutory and/or  
2 regulatory authority for the Death Master File audit with the time period back to January 1, 1992,  
3 and (2) legal, statutory and/or regulatory authority for entitlement to company records beyond the  
4 states represented by the auditor. On or about November 8, 2012, ANICO sent an email to UPCH  
5 reiterating this position.

6 35. On December 20, 2012, counsel for the Controller sent a letter to ANICO in response  
7 to ANICO's position that the Controller lacked authority to conduct an audit covering the scope and  
8 time period being sought by UPCH (hereinafter the "December Demand Letter"). Specifically,  
9 counsel for the Controller notified ANICO that California Code of Civil Procedure section 1571  
10 provides the Controller with the authority to conduct an audit covering the records and information  
11 being sought from ANICO, and that there is no limitation on the time period to be covered by the  
12 audit and no limitation on which of ANICO's records or information can be audited. Thus, all of  
13 ANICO's policy records would be subject to the audit. Additionally, the December Demand Letter  
14 informed ANICO that it was impossible for UPCH to identify all property potentially reportable to  
15 California absent a review of *all* policy records and that the accuracy and effectiveness of the  
16 Controller's audit was contingent upon production of *all* data requested.

17 36. Pursuant to California Code of Civil Procedure section 1571, and other provisions  
18 of law, the December Demand Letter required ANICO to take the following actions:

- 19  
20 (a) Respond forthwith, and in any event not later than 30 days after receipt of  
21 the December Demand Letter, to all currently outstanding requests served on  
22 ANICO by UPCH pursuant to the audit of unclaimed property being  
23 conducted by California as part of a unified audit with the participating  
24 states. The response demanded was to be served upon UPCH, was to be  
25 final and complete, and was to contain the records and information requested  
26 in the forms specified; and  
27

- 1 (b) Cease forthwith from engaging in dilatory and obstructive actions that delay  
2 or impede the timely completion of the unclaimed property audit. Without  
3 limitation, this required ANICO to respond promptly to all questions asked  
4 by UPCH in pursuance of the audit process, to provide prompt access by  
5 UPCH to personnel with personal and direct knowledge on matters of  
6 inquiry, and to provide data and information in a form reasonably calculated  
7 to be auditable.

8 A copy of the December Demand Letter is attached hereto as Exhibit 3.

9 37. On or about January 2, 2013, in response to the December Demand Letter, ANICO  
10 informed UPCH via teleconference that it did not believe that their actions constituted a refusal to  
11 comply with UPCH's Audit Procedures Document and/or the Requested Fields Document.

12 38. On or about January 21, 2013, ANICO provided UPCH with a production of  
13 incomplete, selective and largely duplicative policy data. Moreover, in a further effort to delay a  
14 full and complete examination of its records, ANICO stated in a letter to UPCH that while it had  
15 received a response from California regarding the States' authority to conduct an unclaimed  
16 property audit, ANICO was awaiting responses from the other thirty-seven (37) participant states.

17 39. On January 22, 2013, ANICO sent a separate letter to the Controller's counsel  
18 asserting that ANICO had not refused to comply with UPCH's requests for data and information.  
19 The State disagrees, given that ANICO's January 2013 production was incomplete, selective and  
20 largely duplicative. A copy of ANICO's January 22, 2013, letter is attached hereto as Exhibit 4.

21 40. On or about February 19, 2013, UPCH sent a follow-up email inquiry to ANICO  
22 regarding ANICO's January 2013 policy data production. Specifically, UPCH noted that  
23 numerous policies had been provided by ANICO multiple times and that the production did not  
24 appear complete in regards to unique policies/contracts for which claims had not been paid.

25 41. On or about March 12, 2013, UPCH reiterated its position to ANICO during a  
26 conference call that ANICO's January 2013 production did not appear complete because, based  
27

1 upon ANICO's annual reports, UPCH expected more than 200,000 insurance policies and annuity  
2 contracts with no claims and that ANICO should have more currently in-force policies from 1992.

3 42. On or about March 15, 2013, ANICO sent a letter to UPCH in response to UPCH's  
4 February 19, 2013 email inquiry regarding ANICO's January 2013 policy data production. In its  
5 response, ANICO informed UPCH that "ANICO did not provide currently in-force policies," on  
6 the basis that such policies were not subject to the Controller's unclaimed property audit.

7 43. On or about March 20, 2013, UPCH had a conference call with ANICO to discuss  
8 deficiencies with ANICO's January 2013 policy data production. During this conference call,  
9 ANICO again asserted its position that the Controller had no authority to request currently "in-  
10 force policies," and that to gain access to such policy data and information California would have  
11 to initiate legal action. ANICO also confirmed UPCH's belief that its January 2013 policy data  
12 production was selective and that ANICO merely provided "examples" of relevant policy  
13 information.

14 44. On or about March 20, 2013, ANICO memorialized in writing its position regarding  
15 its refusal to provide data requested by the Controller's auditor and the Controller's counsel  
16 (hereinafter the "March 20 Letter"). By way of the March 20 Letter, ANICO transmitted to UPCH  
17 a statement representing that ANICO does not believe that "in-force policies" are reportable, nor  
18 will such policies lead to reportable property. Since ANICO has refused to provide its records to  
19 California's auditor, California's auditor remains unable to review ANICO's records to assess  
20 whether funds have, in fact, become due and payable. The purpose of the audit is to allow the State  
21 to review all potentially escheatable property. Nonetheless, ANICO is depriving the State of the  
22 ability to review the company's records to identify escheatable property. California's auditor does  
23 not, and need not, accept ANICO's word that it has, on its own, correctly identified and segregated  
24 its own "in-force policies." The very purpose of the audit is to verify the information contained in  
25 ANICO's books and records, to verify whether the company has, in fact, been in contact with  
26 policyholders in the last three years, to verify the company's representations that policyholders  
27 have been paying the premiums, and to otherwise review ANICO's data and underlying records to

1 ensure that the company has not failed to identify and report unclaimed property that should have  
2 been reported and remitted to the State. Attached hereto as Exhibit 5 is a true and correct copy of  
3 the March 20 Letter.

4 45. ANICO has, thus far, failed to produce final and complete responses to the data  
5 requests from UPCH. The reasonable deadline of January 21, 2013, articulated in the December  
6 Demand Letter, has come and gone. ANICO is still failing to comply with the reasonable and  
7 necessary requests posed by the State's auditor, thereby preventing the Controller from undertaking  
8 a complete and lawful audit of ANICO. Moreover, ANICO is blatantly refusing to provide policy  
9 data requested by the Controller, asserting that the company has already made its own evaluations  
10 regarding the reportability of such policies.

11  
12 **D. THE EFFECTS OF ANICO'S FAILURE TO COMPLY WITH THE AUDIT.**

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

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

1 (d) Whether ANICO has adequate procedures to monitor retained asset accounts for  
2 dormancy;

3 (e) Whether ANICO has selectively used information suggesting the possibility of an  
4 insured's death to cease annuity payments but not to notify beneficiaries of proceeds  
5 that might be due them and to escheat proceeds to the State when beneficiaries are not  
6 paid;

7 (f) Whether ANICO has adequate procedures to monitor when life insurance policies  
8 have reached their limiting age.

9 47. ANICO's failure to fully comply with the Controller's unclaimed property audit has  
10 prevented the Controller from identifying unclaimed life insurance proceeds that are required to be  
11 paid to the State Treasury through escheatment under California Code of Civil Procedure section  
12 1515(a). As a result, the State, and the people of the State, have suffered and continue to suffer  
13 significant damages by being deprived of the beneficial use of those unclaimed insurance proceeds.

14 48. The Controller now seeks to prohibit ANICO from continuing to violate the UPL  
15 and enforce the duty of ANICO to permit the full, complete and timely examination of its records  
16 pursuant to California Code of Civil Procedure sections 1571 and 1572, and other applicable  
17 provisions of the UPL, by requiring ANICO to provide full, complete and accurate responses to all  
18 data requests from the Controller and his representatives, including, but not limited to, the policy  
19 data download for all life insurance policies and annuity contracts currently in force and that have  
20 been in force going back to January 1, 1992, with the fields that were provided in the sample policy  
21 data download.

22 49. The Controller further seeks to prohibit ANICO from continuing to violate the UPL  
23 and enforce the duty of ANICO to permit a full, complete, and timely examination of its records  
24 pursuant to California Code of Civil Procedure sections 1571 and 1572, and other applicable  
25 provisions of the UPL, by requiring ANICO to provide prompt access by the Controller and his  
26 representatives to personnel with personal direct knowledge on matters of inquiry, respond  
27

1 promptly to all questions asked by UPOCH in pursuance of the audit process, and to provide data  
2 and information in a form reasonably calculated to be auditable.

3 50. Additionally, the Controller seeks to prohibit ANICO from continuing to violate the  
4 UPL and enforce the duty of ANICO to permit a full, complete, and timely examination of its  
5 records pursuant to California Code of Civil Procedure sections 1571 and 1572, and other  
6 applicable provisions of the UPL, by requiring ANICO to confirm that it has produced all policies  
7 and procedures currently in effect by which ANICO identifies, reports, and pays over death and  
8 annuity benefits that require escheatment by operation of law.

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 Plaintiff Against All Defendants Including Does 1-25, Inclusive)**

14 51. Plaintiffs repeat and reallege paragraphs 1 through 50 inclusive, and incorporate the  
15 same as if set forth herein at length.

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

24 53. Beginning on or about August, 2012 and continuing to the present time, Defendants,  
25 and each of them, have wrongfully and unlawfully refused to submit to the full, complete and  
26 timely audit of its records pursuant to California Code of Civil Procedure sections 1571 and 1582,  
27 has failed to provide complete responses to requests for data and information from the Controller

1 and his representatives in connection with the audit, and has engaged in dilatory and obstructive  
2 actions that have impeded the timely completion of the audit.

3 54. On or about December 20, 2012, the Controller notified Defendants of their failure  
4 to submit to a full, complete, and timely examination of their records in connection with the  
5 Controller's unclaimed property audit pursuant to California Code of Civil Procedure Section 1571  
6 and demanded that Defendants stop their wrongful conduct described above. As set forth in the  
7 March 20 Letter, Defendants, and each of them, have refused and still refuse to refrain from  
8 wrongful conduct and permit a full, complete and timely examination of its records in accordance  
9 with California Code of Civil Procedure Section 1571(a).

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

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

20 57. The State, and the people of the State, have no plain, adequate, or speedy remedy at  
21 law for Defendants' wrongful conduct.

22 58. In accordance with California Code of Civil Procedure section 1572(a)(1), the  
23 Controller now seeks to prohibit ANICO from continuing to violate the UPL and enforce the duty of  
24 Defendants to permit the examination of its records pursuant to California Code of Civil Procedure  
25 section 1571(a).

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



**PRAYER FOR RELIEF**

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

1. For preliminary and permanent injunctive relief enjoining Defendants from failing and refusing to comply with the UPL and requiring Defendants, and each of them, and their agents, servants, and employees, and all persons acting under, in concert with, or for Defendants to:

- (a) Permit a full, complete and timely examination of all their books and records pursuant to California Code of Civil Procedure sections 1571 and 1572, and all other applicable provisions of California's UPL;
- (b) Provide full, complete and accurate responses to all data requests from the Controller and his representatives, including, but not limited to, the policy data download for all life insurance policies and annuity contracts currently in force and that have been in force going back to January 1, 1992 with the fields that were provided in the sample policy data download;
- (c) Provide prompt access to personnel with personal and direct knowledge on matters of inquiry;
- (d) Respond promptly to all questions asked in pursuance of the audit process;
- (e) Provide data and information in a form reasonably calculated to be auditable; and
- (f) Confirm that all policies and procedures currently in effect by which Defendants identify, report, and pay over death and annuity benefits that require escheatment by operation of law have been produced, and to provide any such documents that have not been produced to UPCH.

2. For all costs of suit and fees, including reasonable attorneys' fees as appropriate;

3. For all damages and penalties due to the State, including all penalties due under applicable provisions of California's UPL; and

4. For any other relief this Court deems just, proper and equitable.

Dated: \_\_\_\_\_

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

**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 ANICO 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 May \_\_\_\_, 2013.

Richard Chivaro

\_\_\_\_\_  
(Signature)