

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Case Number: CGC-15-548384

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ORDER

THRIVENT FINANCIAL FOR LUTHERANS VS. BETTY YEE ET AL

001C06419531

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1 ANDREW B. KAY, Admitted *Pro Hac Vice*
2 PHILIP RANDOLPH SEYBOLD, Admitted *Pro Hac Vice*
3 COZEN O'CONNOR
4 1200 19th Street, NW
5 Washington, DC 20036
6 Telephone: (202) 912-4800
7 Facsimile: (202) 861-1905

8 PILLSBURY WINTHROP SHAW PITTMAN LLP
9 THOMAS V. LORAN III (CSB 95255)
10 ANDREW D. LANPHERE (CSB 191479)
11 Four Embarcadero Center, 22nd Floor
12 San Francisco, CA 94111
13 Telephone: (415) 983-1000
14 Facsimile: (415) 983-1200

15 Attorneys for Plaintiff
16 THRIVENT FINANCIAL
17 FOR LUTHERANS

18 Superior Court of the State of California
19 In and For the City and County of San Francisco
20 Civil - Unlimited

21 THRIVENT FINANCIAL FOR
22 LUTHERANS, on its own behalf and on
23 behalf of its members and related subsidiaries
24 and affiliates,

25 Plaintiff,

26 vs.

27 BETTY T. YEE, individually in her official
28 capacity as CALIFORNIA STATE
CONTROLLER; The OFFICE OF THE
STATE CONTROLLER; and DOES 1-10,
inclusive,

Defendants.

FILED
Superior Court of California
County of San Francisco

JUL 18 2018

CLERK OF THE COURT
BY: X. Lee Rice
Deputy Clerk

Case No. CGC-15-548384

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT, OR IN
THE ALTERNATIVE, MOTION
FOR SUMMARY ADJUDICATION**

Date: July 9, 2018
Time: 9:30 a.m.
Place: Department 302

Case Filed: October 9, 2015
Trial Date: October 15, 2018

1 The motion for summary judgment or, in the alternative, summary adjudication of plaintiff
2 Thrivent Financial for Lutherans came on for hearing by the Court on July 9, 2018 at 9:30 a.m. The
3 Court having considered the pleadings in this matter, and all arguments and papers submitted in
4 support of and in opposition to the motion, IT IS HEREBY ORDERED as follows:

5 Plaintiff Thrivent Financial for Lutherans' motion for summary judgment is granted.
6 Thrivent is entitled to a declaration that defendants Betty Yee (in her official capacity as
7 California State Controller) and the Office of the State Controller adopted two regulations -
8 the "External Database Regulation" and the "Dormancy Trigger Regulation" - without
9 compliance with the procedural requirements of the California Administrative Procedure Act
10 and are therefore invalid. Defendants are enjoined from enforcing or threatening to enforce
11 the External Database Regulation and the Dormancy Trigger Regulation and must remove all
12 references to those regulations in the materials they disseminate to life insurance companies
13 unless accompanied by a conspicuous disclaimer that the purported requirements of these
14 two regulations are merely defendants' views and do not have any legal effect. This
15 injunction does not preclude defendants from: a) taking steps to promulgate the External
16 Database Regulation and/or the Dormancy Trigger Regulation as valid regulations by
17 complying with the procedural requirements in the APA; b) stating or arguing in any audit of
18 a life insurance company or in any litigation that they believe that the External Database
19 Regulation and/or the Dormancy Trigger Regulation would or should be adopted by a court
20 as a correct interpretation of CCP 1515; or c) requesting the Legislature to amend CCP 1515
21 to enact the External Database Regulation and/or the Dormancy Trigger Regulation.
22 However, unless and until the External Database Regulation and/or the Dormancy Trigger
23 Regulation are validly promulgated per the APA or section 1515 is amended to enact either
24 or both of those regulations, defendants may not under any circumstances knowingly impose
25 any financial consequences of any kind on any life insurance company for failing to comply
26 with those regulations. As used in this order and consistent with the language in the
27 September 2013 Holder Handbook and defendants' interrogatory responses, the "External
28 Database Regulation" is the requirement that in some or all circumstances a life insurer must

1 perform a comparison of its insureds' life insurance policies and/or other documents
2 maintained by the insurer with the Social Security Administration's Death Master File or
3 similar database to determine whether any of its insureds are deceased for purposes of
4 complying with the insurer's obligations under the California Unclaimed Property Law. As
5 used in this order and consistent with the language in defendants' interrogatory responses, the
6 "Dormancy Trigger Regulation" is the requirement that a life insurance policy of a life
7 insurer's insured is reportable as unclaimed property for purposes of the insurer's obligations
8 under the UPL no later than three years after the insurer had reason to know that its insured
9 had died notwithstanding that as of that date less than three years had elapsed since the
10 insurer's own records disclosed that the insured had died. This Order does not address or
11 affect the validity or invalidity of any past or future settlements or agreements between
12 defendants and any life insurance company.

13 Thrivent has standing to challenge both the External Database Regulation and the
14 Dormancy Trigger Regulation as invalid regulations because it is undisputed that both of
15 these regulations impose requirements on Thrivent that Thrivent is not now complying with,
16 does not wish to comply with, and that, if Thrivent complied with them, Thrivent would
17 incur additional unwanted costs and obligations. Moreover, Thrivent's failure to comply with
18 these regulations potentially subjects it to an audit by defendants and imposition of monetary
19 penalties beginning in 2020. Lastly, as a life insurer obligated to comply with the UPL,
20 Thrivent is entitled to know what it needs to do and what it can forbear from doing without
21 running afoul of the requirements imposed by defendants, who are charged with enforcing
22 life insurers' obligations under the UPL and have the authority to assess financial
23 consequences for non-compliance.

24 It is likewise undisputed that defendants adopted both regulations and that those
25 regulations were not adopted in compliance with the procedural requirements of the APA.
26 Other than submission of a declaration which is inconsistent with their interrogatory
27 responses and thus, per the D'Amico rule, does not create a triable issue, defendants have not
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1 submitted or cited to any evidence showing that they have not adopted the two regulations.
2 Thrivent's submission of defendants' interrogatory responses and the 2013 Holder Handbook
3 is sufficient to satisfy its summary judgment burden that defendants adopted those
4 regulations.

5 Defendants' arguments that the two regulations fall outside the broad definition of a
6 regulation in Government Code 11342.600 lack merit. The regulations are rules of "general
7 application" in that they require that the DMF or similar database must be consulted in some
8 circumstances and a life policy in some circumstances must be reported more than three
9 years prior to the insurer's own records disclosing that the insured is deceased. By mandating
10 that in some circumstances insurers must consult the DMF or similar database and a life
11 policy must be reported more than three years prior to an insurer's records disclosing that the
12 insured is deceased, the regulations preclude insurers from complying with their obligations
13 under the UPL without consideration of whether and when they must consult the DMF or
14 similar database and without reporting policies more than three years before the insurer's own
15 records disclose that an insured has died. Much like an appellate opinion or a statute that
16 mandates that the resolution of an issue requires the consideration of various factors is a rule
17 of general application even though the rule may be applied differently in different cases
18 depending on the facts of each case, the regulations mandate the consideration of whether or
19 not certain matters -- the DMF or similar database and an insurer's "reason to know" that an
20 insured has died -- that are nowhere mentioned in section 1515 and had, prior to the adoption
21 of the regulations, not been required (or, at least, not explicitly required) to be considered by
22 insurers in complying with their obligations under the UPL.

23 Nor is the Dormancy Trigger Regulation the only legally tenable construction of
24 section 1515. The text of that section ("funds became due and payable as established from
25 the records of the corporation") is reasonably susceptible to Thrivent's proffered
26 interpretation that the triggering event for the reporting of a policy is the disclosure by an
27 insurer's own records that it's insured is deceased, not what the insurer "had reason to know."
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Neither Yee v. American National Insurance Co. (2015) 235 Cal App. 4th 453, 457, n.2 nor any of the non-California authorities cited by defendants nor any of the statutory interpretation and policy arguments advanced by defendants are to the contrary.

The injunctive relief fashioned by the court is intended to comport with Alvarado v. Dart Container Corp. of California (2018) 4 Cal. 5th 542 and eliminate any confusion in the materials disseminated by defendants, while not hampering defendants if they choose to undertake any effort to incorporate the two regulations into valid California law.

IT IS SO ORDERED.

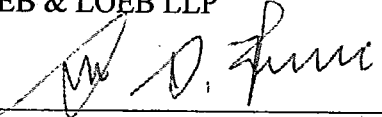
Date: July 13, 2018.



a Judge of the Superior Court

HAROLD KAHN

APPROVED AS TO FORM:
LOEB & LOEB LLP

By  _____

Attorneys for Defendants