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9 Receiver

(ENDORSED)
FILED
JUN 25 2012

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY _____ DEPUTY
S. Marshall

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SANTA CLARA

13 IN RE THE MATTER OF THE CHINESE-
14 AMERICAN MUTUAL ASSISTANCE
15 ASSOCIATION, INC.,
16 A Corporation in Process of Winding Up.

Case No. 110-CV-167333
Hon. Richard Loftus, Jr.,

**RECEIVER'S EX PARTE MOTION
FOR ORDER AUTHORIZING
DISTRIBUTION TO CLAIMANTS**

[No Hearing Requested]

17 Mohamed Poonja, Receiver appointed in the above-referenced action files this Receiver's
18 *Ex Parte* Motion for Order Authorizing Distribution to Claimants ("Motion"), and represents as
19 follows:

20 **I. BACKGROUND**

21 The Chinese American Mutual Assistance Association, Inc. ("CMAA") is a California non-
22 profit benefit corporation that was located in San Jose, California. Pursuant to an agreement reached
23 between the District Attorney of Santa Clara County and the Attorney General of the State of
24 California, CMAA agreed to voluntarily dissolve.

25 Prior to agreeing to dissolve, CMAA administered a program called the Senior Mutual
26 Assistance Program (the "Program"). The Program was available to participants who contributed to it
27 (referred to herein as "Members"). Upon a qualified and eligible Member's death, CMAA was to
28 provide a lump-sum payment to the designated beneficiary of the Member for payment of burial

1 expenses.

2 The agreement between CMAA and the regulatory agencies provided, among other things, that
3 85% of all liquidated assets owned by CMAA be distributed, to the extent possible, to Members for
4 their past contributions. The remaining 15% of the liquidated assets was to be used to pay any
5 outstanding debts, with any remaining balance to go to another California public benefit corporation.
6 The Receiver is informed and believes that this portion of the initial agreement between the parties is
7 no longer in effect. Rather, all of the net proceeds held by the Receiver, which will be described
8 below, will be distributed to CMAA's Members. As will be explained, Members will only receive a
9 small fraction of the amounts they contributed to the Program.

10 The Attorney General conducted an audit of CMAA's books and records. It determined that
11 CMAA could not sustain itself without raising the contribution amounts of its Members. The Attorney
12 General alleged, among other things, that CMAA comingled Members' contributions with public
13 benefit assets. This allegation was denied. In order to resolve this dispute, the parties entered into the
14 agreement where CMAA would voluntarily dissolve.

15 On March 24, 2010, the Attorney General petitioned this court to supervise CMAA's voluntary
16 winding up of its affairs and for the appointment of a receiver. After a hearing on notice to all
17 Members, the Receiver was appointed to wind up and liquidate the assets of CMAA. The Receiver
18 was authorized to sell the assets of CMAA: certain real and personal property.

19 Notice of the hearing regarding the appointment of a receiver and of the hearing on the
20 Receiver's request for authority to sell the real and personal property assets of this receivership estate
21 was provided in three languages: Mandarin, Vietnamese and English and sent to CMAA's
22 approximately 4,300 Members.

23 **II. RECEIVER'S ACTIVITIES**

24 By order of this court dated June 18, 2010, Mohamed Poonja was appointed as Receiver
25 (the "Receiver").

26 As described in the Receiver's First Report and the Receiver's Second Report, and as
27 summarized below, pursuant to the entry of the June 18, 2010 Order For Petition For Court
28 Supervision of Voluntary Winding Up of the Chinese-American Mutual Assistance Association,

1 Inc. and Appointment of Receiver, the Receiver (the "Appointment Order"), a copy of which is
2 attached to the Declaration of Michael A. Isaacs in Support of Receiver's *Ex Parte* Motion for
3 Order Authorizing Distribution to Claimants (the "Declaration") as Exhibit A, the Receiver was
4 authorized to take full and complete possession and control of certain personal property and the
5 real property located at 1669 Flanigan Drive, San Jose, California 95121 (the "Property"),
6 pursuant to Corporations Code 6614.

7 After the entry of the Appointment Order, the Receiver retained Colliers International to
8 market the Property, the only substantial asset of the CMAA, other than a small amount of cash on
9 hand and other limited personal property at the time of the Receiver's appointment.

10 The Property was a custom-built commercial property, comprised of two stories and
11 consisting of 21,054 square feet of office/cultural center space. According to the President of
12 CMAA, the cost of this building was in excess of \$4 million. The initial listing price for the
13 Property was set at \$4,975,000; however, the market dictated a lowering of the asking price to the
14 sum of \$3,200,000.

15 The Receiver negotiated a sale of the Property. On January 19, 2011, pursuant to a motion
16 filed on behalf of the Receiver, the Court entered its Order Granting Motion for Court's
17 Authorization to Sell Real Property and Personal Property (the "Sale Order"). Under the terms of
18 the Sale Order, the Receiver was authorized to sell the Property, together with certain personal
19 property. The Receiver completed the sale, as contemplated by the Sale Order, at a gross sale
20 price of \$3,425,000. After payment of the note secured by a deed of trust against the Property,
21 closing costs, and taxes, the net to the Receiver was approximately \$1,636,887.

22 As indicated in his Second Report, the Receiver at that time had not yet established a
23 procedure for asserting claims in this receivership proceeding.

24 **II. CLAIM FILING PERIOD**

25 During the time period November 1, 2010 through June 15, 2012, the Receiver has taken
26 the following steps, pursuant to the Appointment Order and a subsequent order, as described
27 below:

28 Based upon CMAA's records, the Receiver determined that there were approximately

1 4,300 Members, all of whom could potentially assert a claim against the proceeds held by the
2 Receiver.

3 The Receiver devised a procedure whereby claims could be asserted in this case. Prior to
4 submitting that procedure to the Court, the Receiver circulated his Stipulation Approving
5 Receiver's *Ex Parte* Application for Entry of Order Establishing Claims Procedure and Claims
6 Bar Date (the "Stipulation"), a copy of which is annexed to the Declaration as Exhibit B. The
7 Stipulation was signed by counsel for the California Department of Justice, counsel for CMAA,
8 and counsel for certain claimants in this receivership case, together with counsel for the Receiver.
9 Thereafter, the Receiver filed his Receiver's *Ex Parte* Application for Entry of Order Establishing
10 Claims Procedure and Claims Bar Date (the "Application").

11 Under the terms of the Application, the Receiver indicated that no claims procedure had
12 yet been established because the Receiver was waiting until the sale of the Property closed before
13 setting a claims bar date and establishing a procedure.

14 By the Application, the Receiver sought approval for a notice to be sent to approximately
15 4,300 Members, together with a claim form distributed in three different languages: English,
16 Mandarin, and Vietnamese.

17 In the Application, the Receiver noted that the net to the Receiver from the sale of the
18 Property was \$1,636,887. The Receiver also noted that he believed it was appropriate to establish
19 a timeline for filing claims, recognizing the California Corporations Code § 6517 deadline
20 generally applicable and recommending an appropriate deadline to be established in this case.

21 The Receiver prepared a notice, as noted above, including a Proof of Claim form, and
22 sought to have Members return the form either by mail, by fax, or as a PDF attachment to an e-
23 mail. As noted, the form was drafted in three languages. Each Member was to receive a
24 customized Proof of Claim form noting the amount CMAA's records reflected for their lifetime
25 contribution to CMAA.

26 Under the terms of the claims procedure requested in the Application, Members who
27 agreed with the amount of their contribution per CMAA's records only needed to check "Box 1"
28 noting their agreement, sign the Proof of Claim form, and return it in a self-addressed envelope

1 provided. No supporting documentation was requested of members who checked "Box 1" and
2 their claim would be automatically allowed, as submitted.

3 If Members disputed the amount CMAA's records listed their contribution to have been, as
4 noted in "Box 1," they were required to list the amount they believed they contributed and support
5 their claim with cancelled checks or other evidence that they paid an amount in excess of the
6 amount CMAA's records reflected their lifetime contribution to have been.

7 The Application was clear in noting to the court that at the time the claim form was to be
8 circulated, the Receiver held the sum of approximately \$1,700,000 in cash and that, according to
9 CMAA's records, and assuming no \$15,000 Death Benefits were owed or to be allowed,
10 approximately \$21 million in potential Member claims existed against the approximately \$1.7
11 million in cash held by the Receiver.

12 On May 4, 2011, the Court approved the Application and entered its Order Establishing
13 Claims Procedure and Claims Bar Date (the "Claims Order"). Copies of the Application and
14 Claims Order are annexed to the Declaration as Exhibit C.

15 Under the terms of the Claims Order, the Receiver circulated 4,340 customized claim
16 forms, together with a letter explanation in three languages, and a return envelope.

17 **III. CLAIM REPORT**

18 Annexed to the Declaration as Exhibit D is a Claims Register maintained by the Receiver.
19 Per the Claims Register, over 3,000 Members checked "Box 1," meaning that those Members
20 agreed with the amounts CMAA had recorded for them as the amount of their lifetime
21 contribution to CMAA. The Receiver has no way of knowing if, in fact, Members actually agreed
22 with CMAA's records or if they recognized the economics of this case, i.e., the distribution paid
23 per dollar of claim would be small and may not be worth the trouble and expense of gathering
24 years of supporting documentation.

25 In fairness to the thousands of people who checked Box 1, which, obviously, has expedited
26 the entire process, the Receiver utilized non-attorney assistants to evaluate the "proof" submitted
27 with the Box 2 claims and provide him with a report. This process took a number of months.

28 Approximately 762 Members indicated that their contribution amount was larger than that

1 listed by CMAA and checked "Box 2." Members who selected Box 2 provided varying degrees of
2 documentary support for their claims and claimed amounts ranging from \$25 more than CMAA's
3 records listed their contribution to have been to \$50,000 more, with approximately half claiming
4 that they contributed \$4,500 more than CMAA's records showed.

5 In many instances, Members submitted copies of cancelled checks or CMAA monthly
6 statements that only partially substantiated their Box 2 claim of a higher lifetime contribution
7 amount. Often, Members who checked Box 2 simply wrote to indicate that they were a Member
8 for a certain number of years; therefore, they were owed \$15,000 or some other amount. In many
9 instances, no documentary evidence was provided to support the Member's checking of Box 2 and
10 requesting a larger claim. Some claims were submitted with no claimed amount specified.

11 Beginning on March 2, 2012, the Receiver sent out the first of approximately 430 letters to
12 the CMAA members who had checked Box 2 but failed to adequately substantiate their claim for
13 a higher amount than CMAA's records reflected they had contributed. The letters referenced
14 California Corporations Code § 6517(E), i.e., "Suits against the corporation on claims which have
15 been rejected shall be commenced within 30 days after written notice of rejection thereof is given
16 to the claimant."

17 **III. MEMBERS' RESPONSE TO DISPUTED CLAIMS**

18 As described, the Receiver received varying responses to his disputed claims letters. In
19 some instances, people accepted the amount that CMAA listed for their claims. In other situations,
20 Members have said that they would file a lawsuit, with some indicating plans to bring their claims
21 to Small Claims Court. The Receiver, through counsel, explained that the amount of the claim had
22 been rejected in this Superior Court action; therefore, if Members disputed the amount, they
23 needed to file an action before the Superior Court.

24 Out of the hundreds of disputed claim letters sent to Members, only two parties, through an
25 attorney, filed documents with the court indicating that their claims should be allowed in larger
26 amounts. Negotiations with that attorney occurred and resolution was reached, reducing the
27 asserted amount for one Member from \$14,500 to \$6,500 and for the other Member from \$9,500
28 to \$7,000. Both claims have been allowed as reduced.

1 With respect to the remaining “disputed,” i.e., unsubstantiated claims, the Receiver is allowing
2 claims in amounts either as he agreed, based upon documentation, or for the dollar amount listed in
3 CMAA’s records. As noted above, notwithstanding complaints from various Members, only two
4 people came forward and asserted a claim by having an attorney file a document with the Court.

5 Approximately 18 Members filed claims with no claimed amount specified. Accordingly, the
6 Receiver has estimated their lifetime contribution amount based upon the contribution amounts of
7 Members who joined CMAA within a similar time period. Approximately 20 Members were omitted
8 from the list of Members transmitted to the Receiver by CMAA. Those Members contacted the
9 Receiver and provided evidence of their CMAA membership and support for the claims asserted.
10 Those 20 Members claimed amounts ranging from \$5,000 to \$25,000, with varying degrees of
11 documentary support. As with the 18 Members who did not specify a claimed amount, for the 20
12 Members omitted from CMAA’s original list of Members, the Receiver estimated the amount of their
13 claim based upon the amounts of allowed claims for Members who joined CMAA in the same time
14 period.

15 **III. DISTRIBUTION**


16 The Receiver is proposing to make a distribution to all CMAA Members who have filed
17 claims. In certain instances, claims may still be unclear as to amount or other issues related to the
18 claim. In those instances, a reserve will be made for those claims. However, the Receiver believes
19 it is very important that the vast majority of Members get paid as soon as possible. Unfortunately,
20 as indicated above, the Receiver is estimating that the dividend will be somewhere around \$0.06
21 per dollar contributed by each Member. Accordingly, there will be many disappointed Members.
22 In many instances, there have been language difficulties and/or simply a failure of Members to
23 truly understand that, even utilizing CMAA’s records and assuming no one is entitled to a claim
24 larger than the amount listed in CMAA’s records, as noted above, before increasing the total
25 based on allowed Box 2 claims, there are \$21,550,551.60 in potential claims asserted against
26 approximately \$1.5 million in cash held by the Receiver.

27 It is the Receiver’s intent to make a disbursement to the vast majority of CMAA’s
28 Members, reserve for any claims that remain unresolved (very few fit into that category) and hold

1 a reserve for administrative expenses to complete the process, file the Receiver's Final Account
2 and close this estate.

3 WHEREFORE, the Receiver moves the Court for an order authorizing him to distribute the
4 majority of the receivership funds to Members with allowed claims, in conformity with this
5 Motion.

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7 DATED: *June 21, 2012* POONJA & COMPANY

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9
10 Bv: 
11 MOHAMED POONJA,
RECEIVER

12
13 DATED: *June 21, 2012* McKENNA LONG & ALDRIDGE LLP

14
15 Bv: 
16 MICHAEL A. ISAACS
Attorneys for MOHAMED POONJA

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