

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by, between and among the following: ANGELA CHEN, ALEXANDER CHEN, KENNETH KWAN, TONY CHO, PAUL TOM, ANTHONY VONG, THANH NGO, JOANNE WONG, DUC BINH VUONG, THANH L NGO, DENNIS WAN, QUEEN HO LU, GRACE WANG, PAUL HE, TRUNG NGUYEN YEN, VINH LUU, AND TONY YEN ("Board of Directors") and the CHINESE-AMERICAN MUTUAL ASSISTANCE ASSOCIATION, INC. ("CMAA") and DOLORES CARR, District Attorney of Santa Clara County ("District Attorney") and EDMUND G. BROWN JR., Attorney General of the State of California ("Attorney General"). The term "Parties" shall be used to refer to the Board of Directors, CMAA, the District Attorney, and the Attorney General, collectively. As used in this Agreement the term "Parties" includes each of the foregoing persons and entities and its or his or their respective affiliated or related organizations, agencies or other entities, directors, trustees, officers, employees, principals, agents, managers, representatives, members, shareholders, owners, parents, subsidiaries, predecessors, successors, assigns and transferees (collectively, "Related Persons"). The "effective date" of this Agreement shall be the last date when all signatories have signed the Agreement.

RECITALS

- A. The Attorney General agrees to stay the filing of a Complaint for Damages and Involuntary Dissolution in the Superior Court of California, stay the filing of a Motion to Compel records and documents as ordered under Government Code Section 12588, forego any sanctions derived from a Motion to Compel, forego the monetary liability of the Board of Directors, and waive the Attorney General's fees and costs against the Chinese-American Mutual Assistance Association, Inc. and the following members of the Board of Directors of the nonprofit public benefit corporation known as the Chinese Mutual Assistance Association of Santa Clara County, also known as the Chinese-American Mutual Assistance Association, Inc. ("CMAA"): Angela Chen, Alexander Chen, Kenneth Kwan, Tony Cho, Paul Tom, Anthony Vong, Thanh Ngo, Joanne Wong, Duc Binh Vuong, Thanh L Ngo, Dennis Wan, Queen Ho Lu, Grace Wang, Paul He, Trung Nguyen Yen, Vinh Luu, and Tony Yen. The Attorney General will also allow CMAA to retain eighty-five percent of their current charitable assets for distribution as set forth herein. CMAA agrees to voluntarily dissolve and distribute their charitable assets as more particularly described below under "Terms".
- B. CMAA was incorporated in August 1981 as a California nonprofit public benefit corporation. CMAA was originally incorporated as the Chinese Mutual Assistance Association of Santa Clara County but in 1994 changed its name to the Chinese-American Mutual Assistance Association, Inc. Its Articles of Incorporation state that its purpose is to "promote the welfare of the poor and culturally disadvantaged by assisting them in the orientation of the American culture and their education and job training with a view toward self reliance."
- C. CMAA conducts a program called the "CMAA Senior Mutual Assistance Program" ("Senior Program"). There are several thousand participants in the Senior Program, most of whom are elderly Asians. Participants in the Senior Program agree to make a "contribution" to CMAA when another participant in the Senior Program dies. In exchange for this "contribution," CMAA makes a benefit payment to the participant's designated beneficiary when

the participant dies. Participants of the Senior Program pay, as of January 1, 2007, a one-time admission fee of \$50.00, and an annual \$48.00 activity fee. When a participant in the program dies, the remaining active participants must pay a "contribution" of \$3.00 for each decedent. For example, if 10 participants died the previous month, the remaining participants must pay a "contribution" of \$30.00 (\$3.00 multiplied by 10) to CMAA. The amount of the "contribution" that CMAA administers to the designated beneficiary ranges from one to fifteen thousand dollars depending on the age of the participant when he/she entered the program and the amount of time he/she had been paying into the program. Prior to January 1, 2007, if a participant maintained continuous participation in the program for 20 years, the participant was no longer required to make his/her "contribution." That is, the participant no longer had to pay the \$3.00 "contribution" for each decedent.

D. In approximately 2000, the Charitable Trust Section ("CTS") of the Attorney General's Office informed CMAA that the contributions participants were making into the program were restricted funds that needed to be segregated from CMAA's charitable assets. Additionally, they were informed that CMAA could more properly be formed as a mutual benefit corporation and not a public benefit corporation.

E. In February 2008, CMAA amended the Senior Program rules, imposing a \$25.00 monthly management fee to keep the program viable. Prior to January 1, 2007, participants only had to pay for a one-time admission fee, an annual activity fee, and the monthly "contribution" depending on how many participants died the previous month. The latter "contribution" was waived after 15-20 years of membership in the Senior Program.

F. On July 9, 2008, CTS requested audited financial statements from CMAA pursuant to Government Code section 12586, subdivision (e), which requires entities with gross revenue of over \$2,000,000.00 to prepare annual financial statements that are audited by an independent certified public accountant. From 1998 to 2007, CMAA had revenue ranging from \$2.8 million to \$3.4 million dollars annually but failed to contract for independent audits for those years, in violation of section 12586, subdivision (e).

G. On August 28, 2008, CTS again explained to CMAA that (1) the contributions to the Senior Program were considered restricted funds and could only be used for Senior Program purposes; (2) donations to CMAA, other CMAA assets and contributions cannot be used to fund the Senior Program because charitable assets cannot be used to benefit individuals; and (3) CMAA was required to prepare annual financial statements audited by an independent accountant. CMAA explained that the Senior Program was in jeopardy because the program was running out of money. CMAA had to impose the \$25.00 management fee to keep the program viable.

H. On September 16, 2008, CTS sent CMAA an audit letter requesting program, financial, and governance information. In that audit letter, CTS informed CMAA that it was currently in violation of Government Code section 12586, subsection (e) and that CMAA must retain an independent auditor within 30 days of the date of the audit letter.

I. On November 5, 2008, CTS gave notice to CMAA of possible involuntary dissolution proceedings pursuant to Corporations Code section 6511.

J. On November 17, 2008, CTS conducted an on-site audit of CMAA records, which revealed that CMAA could not sustain itself without raising the contributions of the participants

of the Senior Program. CMAA is borrowing heavily against the equity of its real property, consisting of an office building, taking out a \$1,000,000.00 line of credit against the property. As of January 2008, CMAA had borrowed at least \$300,000.00 against that line of credit.

K. CMAA has not conducted an independent audit since the law's effective date of January 1, 2005, in violation of Government Code section 12586, subsection (e).

L. On November 16, 2009, CTS and CMAA engaged in settlement negotiations. And, on December 4, 2009, CMAA accepted CTS's proposed settlement offer as detailed herein.

M. The Parties now desire to resolve all civil litigation claims arising from the issues or other subject matter that are in any way related to the above-described audit and investigation. The Parties further desire to compromise and settle any and all claims or potential claims between and among them as set forth in this Agreement.

ALLEGATIONS AND RESPONSE

The Attorney General alleges as follows:

1. The Senior Program was not a proper public benefit corporation purpose and should have been administered by a mutual benefit corporation. As such, the Attorney General asserts that CMAA should have been organized as a mutual benefit corporation.

2. The contributions made by Senior Program participants were not contributions to CMAA, and should have been segregated from CMAA's public benefit funds.

3. CMAA failed to segregate the participants' contributions, which were commingled with public benefit assets and reported as public benefit assets in informational returns (IRS Form 990) filed with the Internal Revenue Service. At this time, CMAA cannot distinguish public benefit assets from Senior Program funds.

4. The commingled funds were used to purchase and pay for the real property at 1669 Flanigan Drive, San Jose, CA 95121 (hereafter "the CMAA building") and for construction of the building located at that address. An audit of funds received show that CMAA was not receiving regular public donations or any grants. It appears that approximately 85% of the funds CMAA has received over the years were for the Senior Program.

5. CMAA has borrowed against the CMAA building, using the borrowed funds to offset the losses of the Senior Program.

6. As the CMAA building is a public benefit asset, which was purchased and paid for with both public benefit and Senior Program funds, charitable assets are inuring to the benefit of individuals, in violation of CMAA's articles of incorporation and charitable purpose.

The District Attorney alleges as follows:

7. The District Attorney incorporates the Attorney General's allegations 1 thru 6 and further alleges as follows: Allegations 1 thru 6 also constitute violations of Business and Professions Code section 17200 which could be pursued by the District Attorney.

The Board of Directors respond as follows:

8. The Board of Directors deny the above allegations.

NOW THEREFORE, in consideration of the foregoing and the promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

TERMS

1. Incorporation of Recitals and Allegations. The Recitals and Allegations set forth above and any and all Exhibits attached or referred to herein are incorporated in full in this Agreement by this reference.

2. Non-Admission of Liability. The Parties understand, acknowledge and agree that the settlement reached herein, the negotiation, execution and performance of this Agreement and the terms of this Agreement constitute a compromise of disputed claims involving legal and factual questions and issues, and shall not constitute or be construed as an admission of liability by any of the Board of Directors or that any of the Board of Directors individually and/or collectively acted wrongfully in any way.

3. Affirmative Acts. Provided this Agreement is executed and delivered by all the Parties, the Parties agree to the following (collectively "Affirmative Acts"):

A. Voluntary Dissolution.

1. The Board of Directors agrees to pass a board resolution to voluntarily dissolve CMAA and to file all necessary papers with the necessary government agencies to properly effectuate dissolution.

2. Within a reasonable time of the effective date of this Settlement, CMAA will complete the voluntarily dissolution process.

3. The Board of Directors agrees to fully cooperate with the Attorney General in dissolving the organization.

B. Disposition of Assets

1. The Board of Directors agrees to sell the CMAA building and to liquidate all of its assets.

2. Eighty-five percent of the liquidated assets shall be used to reimburse, to the extent possible, participants in the Senior Program for their past contributions to the Senior Program. The Board of Directors agrees to pass a board resolution to this effect. The Attorney General shall designate a person or entity to effectuate the distribution of the liquidated assets to the participants of the Senior Program and the Board of Directors shall retain said designee. The Board of Directors further agrees to transfer the 85% of the liquidated assets to the designee and to fully cooperate with the designee to effectuate the distribution to the participants in the Senior Program. The Board of Directors further agrees that reimbursements to the participants of the Senior Program will be completed within a reasonable time period but no later than 180 days after the effective date of this Settlement unless good cause is shown to the Attorney General.

3. Fifteen percent shall be retained by CMAA to pay all outstanding debts with the remaining balance, if any, transferred to another California public benefit corporation which has a similar charitable purpose as CMAA with the approval of the Attorney General.

C. The Attorney General agrees that, as long as the Board of Directors comply with the terms of the Settlement, the Attorney General shall not seek reimbursement of its cost and fees associated with the above-described audit and investigation.

D. The Attorney General agrees that, as long as the Board of Directors comply with the Affirmative Acts set forth in Section 3 above, the Attorney General shall take no further action against any of the board members with respect to any claim arising out of, based upon, or attributable to, or in any way involving or related to the allegations set forth above, including but not limited to filing a Complaint for Damages and Involuntary Dissolution or any other Complaint regarding any issues based on the Allegations set forth above.

E. The District Attorney agrees that as long as the Board of Directors comply with the Affirmative Acts set forth in section 3 above, the District Attorney shall take no further actions against the board members with respect to any claim arising out of, based upon, or attributable to, or in any way involved or related to the allegation set forth above, including but not limited to filing a Complaint alleging violations of Business and Professions Code sections 17200 and/or 17500.

4. Violations of Affirmative Acts: The Board of Directors agree that if one or more of the members of the Board violate the Affirmative Acts as described above, the Attorney General's Office, at its option, may do any of the following: (1) re-open this matter as to the Board of Directors, collectively and/or individually who have/ has violated the Settlement for the purpose of filing an action to recover charitable assets; (2) file an action to enjoin such violation and/or to enforce this Settlement, and (3) file an action against each member of the Board of Directors who violated the Agreement for his or her pro rata portion of the attorneys fees and costs incurred by the Attorney General, and the offending party or parties will also be jointly and severally liable for any damages and/or monies recovered, including costs and attorney's fees incurred as a result of the necessity to file the action.

5. No Preclusion of Criminal Prosecution. This Settlement shall not preclude any criminal prosecution by the State of California, federal or local government entity; provided however that the Attorney General expressly represents and warrants to the Board of Directors that it has not referred any part of the investigation for criminal prosecution, and has no intention of initiating or referring any part of the investigation for criminal prosecution at any time; and provided further that the Board of Directors deny any criminal activity of any kind.

6. Binding Effect. The terms of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their Related Persons and the Released Persons. The Parties represent and warrant and covenant to each other that they have not sold, assigned, transferred or otherwise conveyed (collectively, "Transfer") or purported to Transfer any claims, demands, rights, losses, damages, liabilities, causes of action, or other costs or expenses or advances which are subject of this Agreement (including but not limited to any of the Claims or Losses), or the

proceeds of any of the foregoing, and that no such Transfer has been or will be made by or from any such party; and the Parties further agree that any such Transfers shall be null and void.

7. **Effect of Settlement Agreement.** This Agreement is non-revocable and shall be binding upon all the Parties and their respective Related Persons and the Released Persons. Notwithstanding the foregoing, the Attorney General shall be allowed to revoke this Agreement as set forth in 4 above, in the event that any member of the Board of Directors violates the Affirmative Acts set forth above. The effective date of this Agreement shall be the last date on which all of the signatories sign this Agreement.

8. **Counterparts.** This Agreement may be executed in one or more counterparts, and by facsimile signature, each of which shall be deemed to be an original and all of which shall be deemed one and the same document at the time that they are executed. This Agreement is not and shall not be effective, however, unless and until each of the Board of Directors executes and delivers the original or counterpart. Facsimile signatures should be delivered to Scott Chan, Deputy Attorney General. All original signatures to this Agreement also shall be promptly delivered to Scott Chan, Deputy Attorney General, who shall retain all originals.

9. **Entire Agreement.** This Agreement is intended as and shall be a complete and final resolution of all claims and disputes raised by the audits and investigation as described above. This Agreement is the sole, final, complete and exclusive agreement of the Parties concerning the rights granted and duties undertaken and the other matters covered by this Agreement. No other agreement, statement or promise made to or by any of the Parties, or made to or by any attorney, agent or representative of any party, and not contained herein shall be valid or binding as to any of the Parties. Any oral representations or modifications concerning this Agreement shall be of no force and effect, except for a subsequent modification in writing signed by the Parties hereto. The captions and headings used in this Agreement are inserted for convenience only and shall not be used to construe or interpret this Agreement. Whenever the context requires, references to the singular shall include the plural and the plural the singular and any gender shall include any other gender.

10. **No Precedential Value.** The Parties understand, acknowledge and agree that this Agreement is not to be relied upon by third parties and that it carries with it no precedential value and should not be relied upon by any person or entity as evidence of any obligation by any Party, other than the obligations contained in this Agreement.

11. **Advice of Counsel; No Construction Against Drafter.** All Parties, and each of them, understand, represent and warrant that they entered into this Agreement upon the legal advice of their attorney, that said attorney has explained the terms of the Agreement, and that each fully understands and voluntarily accepts the terms of this Agreement. The Parties stipulate that this Agreement, or any term thereof, shall not be construed against any one party or several Parties but shall be construed as the Parties having jointly prepared this Agreement.

12. **Governing Law.** This Agreement shall be construed and enforced pursuant to the laws of the State of California without reference to conflicts of law principles.

13. **Severability.** In the event that any provision in this Agreement is determined to be invalid and/or unenforceable, any such provision(s) shall be severable from the remainder of said Agreement and shall not cause the invalidity and/or unenforceability of the remaining provisions of this Agreement, which remaining provisions shall continue in full force and effect, provided further that any such invalid or unenforceable provision(s) shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be further reformed by the Parties to the extent necessary to make such provision valid and enforceable.

14. **Authority.** The undersigned persons each represent and warrant that they are authorized to and have the right, power and legal capacity to enter into and perform this Agreement. The undersigned persons each further represent and warrant that they have carefully read and understand the contents of this Agreement and have signed the same by their own free act. Each signatory that signs on behalf of another does so with the intent to fully bind that person or entity and hereby represents and warrants that he or it has the authority to sign on behalf of the person or entity.

15. **Complete Defense.** The Parties understand, acknowledge and agree that this Agreement may be pleaded as a full and complete defense to, and used as a basis for an injunction or other legal or equitable relief against, any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of this Agreement.

IN WITNESS WHEREOF, the parties hereto each have entered into, executed and delivered this Agreement as of the effective date hereof.

DATE SIGNED: 2/10/10 By: Angela Chen
ANGELA CHEN

DATE SIGNED: 2-10-10 By: Alexander Chen
ALEXANDER CHEN

DATE SIGNED: 2-19-10^{1/2} By: Kenneth C. Kwan
KENNETH K WAN

DATE SIGNED: 2/10/10 By: Tony Cho
TONY CHO

DATE SIGNED: 2/10/10 By: Paul Tom
PAUL TOM

DATE SIGNED: 2/10/10 By: Anthony Vong
ANTHONY VONG

DATE SIGNED: 2-10-10 By: Thanh Ngo
THANH NGO

DATE SIGNED: 2-10-10 By: Joanne Wong
JOANNE WONG

DATE SIGNED: 2/10/10 By: Duc Binh Vuong
DUC BINH VUONG

DATE SIGNED:

2/10/10

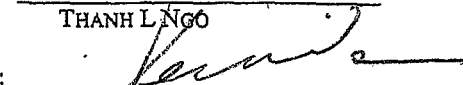
By:


THANH L. NGO

DATE SIGNED:

2/10/2010


By:


DENNIS WAN

DATE SIGNED:

2/10/10

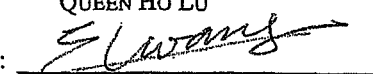
By:


QUEEN HO LU

DATE SIGNED:

2/10/10

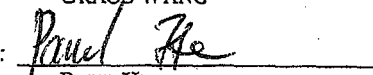
By:


GRACE WANG

DATE SIGNED:

2/10/10

By:


PAUL HE

DATE SIGNED:

2/20/10

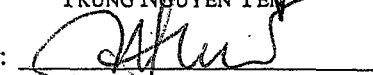
By:


TRUNG NGUYEN YEN

DATE SIGNED:

2/10/10

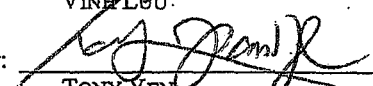
By:


VINH LUU

DATE SIGNED:

2/10/10

By:



TONY YEN

CHINESE-AMERICAN MUTUAL ASSISTANCE ASSOCIATION

DATE SIGNED:

2/10/10

By:


ANGELA CHEN, PRESIDENT

SANTA CLARA COUNTY DISTRICT ATTORNEY

DATE SIGNED:

By:

S. MICHAEL LEE,
DEPUTY DISTRICT ATTORNEY FOR
DOLORES CARR, DISTRICT ATTORNEY

ATTORNEY GENERAL OF THE STATE OF CALIFORNIA

DATE SIGNED:

By:

PHILLIP SCOTT CHAN,
DEPUTY ATTORNEY GENERAL, FOR
EDMUND G. BROWN JR.,
ATTORNEY GENERAL

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DATE SIGNED: 2/10/10 By: [Signature]
THANH L NGO

DATE SIGNED: 2/10/2010 By: [Signature]
DENNIS WAN

DATE SIGNED: By: [Signature]
QUEEN HO LU

DATE SIGNED: 2/10/10 By: [Signature]
GRACE WANG

DATE SIGNED: 2/10/10 By: [Signature]
PAUL HE

DATE SIGNED: By: [Signature]
TRUNG NGUYEN YEN

DATE SIGNED: 2/10/10 By: [Signature]
VINH DU

DATE SIGNED: 2/10/10 By: [Signature]
TONY YEN

DATE SIGNED: 2/10/10 By: [Signature]
CHINESE-AMERICAN MUTUAL ASSISTANCE ASSOCIATION
ANGELA CHEN, PRESIDENT

DATE SIGNED: 2/17/10 By: [Signature]
S. MICHAEL LEE,
DEPUTY DISTRICT ATTORNEY FOR
DOLORES CARR, DISTRICT ATTORNEY

DATE SIGNED: 3/5/2010 By: [Signature]
ATTORNEY GENERAL OF THE STATE OF CALIFORNIA
PHILLIP SCOTT CHAN,
DEPUTY ATTORNEY GENERAL, FOR
EDMUND G. BROWN JR.,
ATTORNEY GENERAL