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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SANTA CLARA**

11 IN RE: THE MATTER OF THE
CHINESE-AMERICAN MUTUAL
12 ASSISTANCE ASSOCIATION, INC.
13 A Corporation in Process of Winding Up,

Case No. 110CV167333

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR COURT'S
AUTHORIZATION TO SELL REAL
PROPERTY AND PERSONAL
PROPERTY**

Date: January 19, 2011
Time: 9:00 a.m.
Dept.: 161 North First Street
San Jose, California 95113
Department 19
Judge: The Honorable Richard Loftus

19 **I. INTRODUCTION**

20 Court-appointed receiver Mohamed Poonja (the "Receiver") moves for authorization to sell
21 the real property and all improvements thereto commonly known as 1669 Flanigan Drive, San Jose,
22 California (the "Real Property"), as well as certain personal property of the receivership estate
23 consisting of a 1992 Dodge Caravan vehicle, office furniture, office equipment (including
24 computers, printers and fax machines), Buddha statues, and library books (collectively, the "Personal
25 Property").
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1 On June 18, 2010, the Court appointed the Receiver in the above-captioned case. The
2 Court's order appointing the Receiver (the "Appointment Order") directed him to manage, protect,
3 improve, and maintain the receivership estate ("Receivership Estate"), as that phrase is defined in the
4 Appointment Order, including the Real Property and Personal Property. In addition, the
5 Appointment Order authorizes the Receiver to market and sell the Real Property and Personal
6 Property, subject to approval by this Court.
7

8 For reasons described below and in the declaration of Mohamed Poonja ("Poonja
9 Declaration") filed herewith, the Court should authorize (1) the sale of the Real Property on the
10 terms provided in the Agreement for Purchase and Sale (the "Sale Agreement") attached as Exhibit
11 B to the Poonja Declaration; and (2) the sale of the Personal Property on the terms described below
12 and in the Poonja Declaration.
13

14 **II. SUMMARY OF FACTS**

15 **A. Appointment of Receiver**

16 On June 18, 2010, this Court appointed the Receiver to manage and oversee the voluntary
17 winding up and liquidation of the assets of the Chinese-American Mutual Assistance Association,
18 Inc. ("CMAA"). In pertinent part, the Appointment Order directed the Receiver to:

19 ...use, operate, manage and control the Receivership Estate, to collect and receive
20 any and all rents, sub-rents, lease payments, profits and other income from the
21 Receivership Estate, to protect, preserve, improve and maintain the Receivership
22 Estate, and to incur expenses that are necessary and appropriate to care for,
23 preserve and maintain the Receivership Estate.

(See Appointment Order, §4; Poonja Declaration, Exhibit A.)

In addition, the Appointment Order authorizes the Receiver to:

24 ...market and sell the Property [which term includes the Real Property and
25 Personal Property] and to take such actions as are necessary to effectuate a private
26 sale of the Property. In carrying out these duties, the Receiver is authorized to
27 retain properly qualified real estate professionals, including, but not limited to, a
28 real estate appraiser, broker and/or agent to list and market the Property. Any sale
of real property requires approval by the Court and shall be done by motion with
the Court.

1 (Id. at ¶4(1).)

2 **B. Proposed Sale of the Real Property and Personal Property**

3 Pursuant to the terms of the Appointment Order, the Receiver has marketed the Real Property
4 for sale, and, following extensive marketing efforts and an auction described in the Poonja
5 Declaration, located a buyer. To that end, 9969 Asset, LLC or its nominee (“9969 Asset”) has
6 offered to purchase the Real Property for the sum of \$3,425,000. (Poonja Declaration, ¶¶ 4 – 7.)
7 The Receiver and 9969 Asset have entered into the Sale Agreement, which is expressly subject to
8 approval by this Court. (Poonja Declaration, ¶ 8 and Exhibit B.) Under the terms of the Sale
9 Agreement, the closing date will occur thirty days after the Court approves the sale of the Real
10 Property.
11

12 By the Motion, the Receiver also seeks authority to sell the Personal Property on the
13 following terms:

- 14
- 15 • the Receiver will sell the 1992 Dodge Caravan vehicle for \$1,000;
 - 16 • the Receiver will sell the office furniture, office equipment (including computers,
17 printers and fax machines) and library books to 9969 Asset for \$3,000; and
 - 18 • the Receiver will sell the Buddha statues to Tony Ly for \$3,500.

19 The sale of the Personal Property will be as is, without any warranties or representations whatsoever.
(Poonja Declaration, ¶ 16.)

20 The Receiver believes that the sale of the Real Property should be approved by the Court, as
21 the terms of the Sale Agreement are fair and reasonable based upon the Receiver’s judgment and
22 experience. (Poonja Declaration, ¶ 18.) Moreover, the Receiver believes that the sale of the
23 Personal Property, on the terms described above and in the Poonja Declaration, is in the best interest
24 of the Receivership Estate. (Poonja Declaration, ¶ 19.)

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1 **III. LEGAL ARGUMENT**

2 The Appointment Order expressly grants the Receiver the authority to market and sell the
3 Real Property and Personal Property via private sale, subject to Court approval. In addition, this
4 Motion is authorized under Code of Procedure section 568, which provides:

5 The receiver has, under the control of the Court, power to bring and defend
6 actions in his own name, as receiver; to take and keep possession of the property,
7 to receive rents, collect debts, to compound for and compromise the same, to
8 make transfers, and generally to do such acts respecting the property as the Court
9 may authorize.

10 The sales of the Real Property and Personal Property constitute an act "...for the benefit of
11 all who may have an interest in the receivership property." (Cal. Rule of Court 3.1179(a)(2).) To
12 that end, the Appointment Order provides that, subject to Court approval, the Receiver is responsible
13 for distributing certain percentages of CMAA's liquidated assets, net the costs of the receivership, to
14 the participants of CMAA's "Senior Mutual Assistance Program," as well as another California
15 public benefit corporation approved by the Court which has a similar charitable purpose as CMAA.
16 (Poonja Declaration, Exhibit A, ¶4(a).)

17 The Receiver believes that the sale of the Real Property pursuant to the terms of the Sale
18 Agreement best accomplishes the Receiver's duties to liquidate and distribute CMAA's assets
19 pursuant to the terms of the Appointment Order. (Poonja Declaration, ¶ 18.) Likewise, the Receiver
20 believes that the sale of the Personal Property on the terms described above and in the Poonja
21 Declaration is in the best interest of the Receivership Estate. (Poonja Declaration, ¶ 19.)

22 **IV. CONCLUSION**

23 For all the foregoing and proper reasons, the Receiver respectfully requests that the Court
24 grant the Motion and authorize the Receiver to sell the Real Property and Personal Property on the
25 terms described hereinabove.
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1 Dated: December 21, 2010

DUANE MORRIS LLP

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3 By: 

ARON M. OLINER

Attorneys for Receiver, MOHAMED POONJA

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