

CHOI & ITO
Attorneys at Law

CHUCK C. CHOI (pro hac vice pending)
ALLISON A. ITO (pro hac vice pending)
700 Bishop Street, Suite 1107
Honolulu, Hawaii 96813
Telephone: (808) 533-1877
Fax: (808) 566-6900
Email: cchoi@hibklaw.com; aito@hibklaw.com

MCDONALD LAW OFFICE

Charles H. McDonald II (F0494)
2nd Floor ICC, Room 203
Gualo Rai, Saipan, MP 96950
Telephone: (866) 967-7567
E-Mail: charles@mcdonald.law

Proposed Attorneys for Debtor
and Debtor-in-Possession

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS
BANKRUPTCY DIVISION

In re

IMPERIAL PACIFIC INTERNATIONAL
(CNMI), LLC,

Debtor and
Debtor-in-Possession.

Bk. No. 24-00002
(Chapter 11)

MOTION FOR ORDER
AUTHORIZING DEBTOR TO PAY
PRE-PETITION WAGES AND OTHER
EMPLOYMENT-RELATED COSTS
AND EXPENSES; EXHIBITS "A" - "B"

HEARING
DATE: [To be set]
TIME: [To be set]
JUDGE: Hon. Ramona Manglona



MOTION FOR ORDER AUTHORIZING DEBTOR
TO PAY PRE-PETITION WAGES AND OTHER
EMPLOYMENT-RELATED COSTS AND EXPENSES

Imperial Pacific International (CNMI), LLC, debtor and debtor-in-possession (“Debtor”), hereby move this Court for the entry of an order authorizing the Debtor in the regular course of the Debtor’s business and in the Debtor’s business discretion, to: (i) pay all accrued but unpaid employment-related costs and expenses that arose pre-petition, including without limitation pre-petition wages, salaries, gratuities, payroll taxes, and payroll deductions and required contributions, (hereinafter collectively referred to as the “Pre-Petition Employment Expenses”), and to honor any outstanding checks for such Pre-Petition Employment Expenses, and (ii) grant such other and further relief as the Court deems just and proper.

This Motion is brought pursuant to 11 U.S.C. §§ 105, 507(a)(4), 507(a)(5), 1106, and 1107(a), and is based upon the attached Memorandum in Support and the exhibits attached thereto, and the *Declaration of Howyo Chi in Support Of First Day Motions* (“Chi Declaration”), and by the record in this case, and by such other evidence and argument as counsel may present before or at the hearing on the Motion.

In support of this Motion, the Debtor respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter, pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding, pursuant to 28 U.S.C. § 157(b)(2).

2. Venue is proper before the Court, pursuant to 28 U.S.C. §§ 1408 and 1409.

3. This Motion is made pursuant to 11 U.S.C. § § 105, 507, 1106 and 1102.

LIMITED BACKGROUND

4. On April 19, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the District Court for the Northern Mariana Islands, Bankruptcy Division (the “Court”).

5. The Debtor currently employs approximately 12 full time and 3 part time hourly employees and approximately 0 salaried employees. All hourly employees have their time tracked by time clock.

6. The employees are critical to maintaining and preserving the goodwill of the Debtor and safeguarding the Debtor’s assets, making the employees essential to the Debtor’s reorganization.

7. The employees are paid using different rates of pay depending on job responsibilities and years of service. Employees are paid bi-weekly.

8. The next regularly scheduled pay date for employees is May 3, 2024, for the period covering from April 15, 2024 through April 28, 2024.

9. As of the Petition Date, employees also had accrued and unpaid wages for the current pay period.

10. Attached hereto as Exhibit “A” is a listing of the net pay received by the employees for the period ending April 14, 2024. Since the net pay does not change much from pay period to pay period, this should be sufficient to provide the Court with notice of the amounts involved per employee in the event the requested relief is granted.

11. The complete payroll ledger for the current pay period is not attached because the report contains confidential information, including social security numbers, any garnishments, rates of pay for employees, charitable contribution deductions and any

1 401(k) deductions. Further, the report would be a projection only, and would not be any
2 more accurate than the list attached as Exhibit "A".

3
4 12. The Debtor estimates that each employee will receive up to \$2,363.81. No
5 employee will receive more than \$15,150 in pre-petition wages. For the period ending
6 April 14, 2024, the typical employee received between \$251.20 and \$2,363.81, and as per
7 the attached listing, the highest employee net pay was \$2,363.81.

8
9 13. It is possible that certain employees may not have as yet cashed their
10 payroll check from a prior period (payroll is bi-weekly). The Debtor is confident that the
11 checks are few in number and the total amounts involved are relatively insignificant in
12 amount to anyone other than the employee recipients. The Debtor seeks authority to
13 honor any check that may be outstanding from the pre-petition period, as such a claim
14 would very likely otherwise be entitled to priority under 11 U.S.C. §507(a)(4), and their
15 payment will have a de minimis effect on the business. If any such checks exist, the
16 number of outstanding checks must be small, since most employees have their pay
17 automatically deposited into their accounts.

18
19 14. Up until late 2021, the Debtor offered employees paid time-off ("leave
20 pay") based on the time in service. That benefit was stopped in 2021. However, there
21 are unpaid leave pay for current / former employees.

22
23 15. Exhibit "B" to this Motion shows the earned and accrued leave pay to
24 which each of the Debtor's current employees is entitled, as of November 30, 2021. The
25 total earned and accrued pay leave of all current employees is approximately \$21,041.75
26 (\$0.00 accrued in the 180-day period prior to the Petition Date).

27
28 16. At this time, the Debtor is **not** seeking authority to pay the leave pay.

1 17. The Debtor makes deductions from the employee payroll for federal tax
2 withholding. The Debtor requests authority to pay over to the appropriate third parties all
3 such funds in accordance with existing company policies and practices, as well as state
4 and federal laws. The figures per employee are de minimis.

6 18. The total amount proposed to be paid to each employee in pre- petition
7 wages and gratuities and benefits and is likely to be less than the priority cap of \$15,150
8 under 11 U.S.C. §507(a)(4) and \$15,150 under 11 U.S.C. §507(a)(5). In the event that an
9 employee might exceed those limits, the Debtor respectively seeks authority to honor, in
10 its discretion, all such employee claims for wages, gratuities, and benefits and
11 reimbursable employee expenses up to the cap of \$15,150.

13 **RELIEF REQUESTED**

14 19. The Debtor is seeking to minimize any disruption to operations caused by
15 the bankruptcy proceeding.

17 20. By this Motion, the Debtor is seeking (i) authority to pay all accrued but
18 unpaid employment-related costs and expenses that arose pre-petition, including without
19 limitation pre-petition wages, salaries, gratuities, payroll taxes, payroll deductions and
20 required contributions, and to honor any outstanding pre-petition checks for wages
21 (hereinafter collectively referred to as the “Pre-Petition Employment Expenses”), and to
22 honor outstanding checks for such Pre-Petition Employment Expenses, and (ii) such other
23 and further relief as the Court deems just and proper under the circumstances of this case.

25 21. The Debtor would like to see all of its employees paid, because their
26 morale is critical to preserving the goodwill of the Debtor, which in turn is critical to
27 preserving its going concern value.
28

1 22. If employees are denied compensation, employees would likely suffer
2 personal hardship and may not come back to work.

3
4 23. The Debtor submits that, without experienced employees, it will not be
5 able to continue operations, thereby resulting in immediate and irreparable harm to the
6 Debtor, its estate and its creditors.

7 24. The total amount to be paid to the employees is reasonable compared with
8 the importance and necessity of preserving the morale of the employees and the goodwill
9 of the Debtor, and de minimis compared to the harm likely to be caused by any disruption
10 in Debtor operations.

11
12 **LEGAL AUTHORITY**

13 25. The wages and the like owed the employees will encompass both pre and
14 post-petition obligations. While Sections 1106 and 1107 have been brought into play in
15 connection with Section 105 with respect to claims of the type encompassed within the
16 instant Motion, the claims also fall under the more specific Sections 507(a)(4) and
17 507(a)(5) of the Bankruptcy code pertaining to pre-petition claims for wages and
18 benefits.

19
20 26. Section 105(a) of the Bankruptcy Code provides that "(t)he court may
21 issue any order, process or judgment that is necessary or appropriate to carry out the
22 provisions of this title." 11 U.S.C. § 105(a). The purpose of Section 105(a) is "to enable
23 the court to do whatever is necessary to aid in its jurisdiction, i.e., in anything arising in
24 or relating to a bankruptcy case." 2 Collier on Bankruptcy ¶ 105.02 (15th ed. 1990).
25 Essentially, 11 U.S.C. § 105(a) codifies the bankruptcy court's inherent equitable powers.
26
27 In re Feit & Drexler, Inc., 760 F.2d 406 (2d Cir. 1985).
28

27. In a long line of well-established cases under Section 105(a), courts consistently have authorized debtor to pay certain creditors' pre-petition claims where necessary or appropriate to preserve or enhance the value of the debtor's estate for all creditors. See e.g., Miltenberger v. Logansport Railway, 106 U.S. 286 (1882) (payment of pre-receivership claim prior to reorganization permitted to prevent "stoppage of . . . (crucial) business relations . . ."); Gregg v. Metropolitan Trust Co., 197 U.S. 183 (1905) ("[T]he payment of the employees of the (rail)road is more certain to be necessary in order to keep it running than payment of any other class of previously incurred debt"); In re Chateaugay Corp., 80 B.R. 279 (Bankr. S.D.N.Y. 1987), appeal dismissed, 838 F.2d 59 (2d Cir. 1988) (approving lower court order authorizing debtor prior to plan stage of case to pay pre-petition wages, salaries, business expenses and benefits); In re Ionosphere Clubs, Inc., 98 B.R. 174, 175-76 (Bankr. S.D.N.Y. 1989) (payment of all pre-petition wages, salaries, reimbursable business expenses and health benefits beyond the [then] \$2,000 maximum set by 11 U.S.C. § 507(a)(3) to current employees of debtor airline authorized); In re Gulf Air, Inc., d/b/a TransOcean Airways, Inc., 112 B.R. 152, 153 (Bankr. W.D. La. 1989) (authorizing payment of pre-petition wages, benefits and expenses permitted to "safeguard against loss of going-concern values"); In re Biggs, Inc., 159 B.R. 737, 738 (Bankr. W.D. Pa. 1993) (authorizing payment of \$1.5 million from proceeds of inventory sale to pre-petition wage claims where payment was "necessary to avert a serious threat to the chapter "process").

28. The amounts that the Debtor seeks authority to pay would be accorded priority under Section 507(a)(4) of the Bankruptcy Code. It is likely that these pre-petition employee claims will be paid in full given that Debtor has obtained a DIP

1 financing commitment. Under the circumstances, the Court should, under section 105(a)
 2 of the Bankruptcy Code, authorize the Debtor to pay these pre-petition obligations in the
 3 ordinary course of its business.

4
 5 29. By paying the wage claims of employees arising pre-petition, and by
 6 honoring the benefits earned or accrued pre-petition, the Debtor will incur a nominal cost
 7 to get a substantial benefit, avoiding irreparable damage to the goodwill of the Debtor,
 8 preserving the going concern value of the Debtor, and increasing the likelihood for a
 9 successful reorganization.

10
 11 30. In the case of In re CEI Roofing, Inc., 315 B.R. 50, 59 (Bankr. N.D.Tex.
 12 2004), the court found that pursuant to 11 U.S.C. §1107(a), a debtor in possession is
 13 under an implied duty to “protect and preserve the estate, including an operating business’
 14 going-concern value,” *quoting* In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D.Tex.
 15 2002), and that where appropriate the debtor could move under 11 U.S.C. §105 to obtain
 16 such protection. In authorizing the debtor in possession to pay priority employee wage
 17 and benefit claims in advance of order confirming a Chapter 11 plan, the court in CEI
 18 Roofing found its job made easier because the relief sought was clearly consistent with
 19 other provisions of the Code:
 20

21
 22 Because Congress has specifically provided that prepetition wage claims up
 23 to a certain amount per claim be elevated to priority status under §
 24 503(1)(3)[sic; the former 507(a)(3)], this Court’s job is a little easier than in
 the critical vendor cases and it need not search for implied authorization in
 the Code to pay such claims ahead of the general unsecured claims.

25 In re CEI Roofing, Inc., *supra*, 315 B.R. at 59-60.

26 In explaining the rationale of its holding, the court in CEI Roofing stated:

27
 28 Thus, there has evolved a rule for the payment of prepetition wages
 and benefits which is based on both common sense and the express

provisions of the Bankruptcy Code. If employees are not paid, they will leave. If they leave the Debtor's business, the bankruptcy case fails shortly after the filing. No one will benefit from the process. The Code gives employees a statutory priority that elevates the claims above the general unsecured claims, and, in fact, most claims in the bankruptcy case. To the extent that the existing holders of claims of higher priority than the wage claims consent or do not timely object, such priority claims may be made during the pendency of the bankruptcy case. The treatment and payment of such claims before confirmation does no violence to the Code or existing case law in this circuit. In fact, such orders are usually “necessary” and “appropriate” to implement a debtor's reorganization under Chapter 11.

In this case, the debtors-in-possession, with the consent of their secured creditor and professionals of the estate, seek authority to pay the priority wage claims of their employees. Considering the consent of the parties and for the reasons set forth above, the Court finds that it has the authority pursuant to § 105 and § 507(a)(3) and (4) to authorize the payment of priority wage claims and employee benefits prior to the confirmation of a plan.

In re CEI Roofing, Inc., *supra*, 315 B.R. at 61 (emphasis added).

31. Relatively recently, courts in other nearby jurisdictions have granted similar relief. See, e.g., In re The Filipino Community Center, Inc., Bk. No. 18-00109 (Bankr. D. Haw. 2018); In re The Minesen Company, Bk. No. 19-00849 (Bankr. D. Haw. 2019); In re Kaumana Drive Partners, LLC, Bk. No. 19-01266 (Bankr. D. Haw. 2019); In re Titan Imports, Bk. No. 22-00007 (Bankr. D. Guam 2022); In re Boteilho Hawaii Enterprises, Inc., Bk. No. 22-00827 (Bankr. D. Haw. 2022); In re Mulvadi Corporation, Bk. No. 22-00827 (Bankr. D. Haw. 2022).

CONCLUSION

Based upon the foregoing points and authorities, the Debtor respectfully requests that the Court grant the instant Motion, and enter an order authorizing the Debtor, in the regular course of the Debtor's business and in the Debtor's business discretion, to pay pre-

1 petition wages and other employment-related costs and expenses, as described above, and
2 grant such other and further relief as the Court deems just and proper.
3

4 DATED: Hagatna, Guam, April 23, 2024.

5
6 /s/ Charles H. McDonald II
7 CHUCK C. CHOI
8 ALLISON A. ITO
9 CHARLES H. McDONALD II
10 Proposed Attorneys for Debtor and
11 Debtor-in-Possession
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Exhibit ANet Pay for Pay Period Ending April 14, 2024

Last Name	First Name	Net pay
Chi	How-Yo	\$2,363.81
Lieto	Herman	\$602.72
Ada	Nikki Renae T	\$748.04
Cabrera	Natividad A	\$794.42
Rumoon	Brad	\$602.72
Tenorio Jr	Jesse	\$477.09
Manalo	Zachary	\$547.06
Seman	Elias	\$681.33
Camacho Jr	Anthony	\$524.10
Backman	Leeland	\$247.36
Ichihara	Jesse	\$251.20
Li	Piaoran	\$863.50
Zong	Haitao	\$898.04
Liu	Hanqin	\$996.13
Liang	Xuchong	\$252.00
Lam	Wing Piu Billy	\$339.88

Exhibit B
Accrued Sick and Vacation (through November 30, 2021)

Last Name	First Name	Accrued Time Off (in \$)
Chi	How-Yo	\$13,645.24
Lieto	Herman	\$353.93
Ada	Nikki Renae T	\$1,484.31
Cabrera	Natividad A	\$893.32
Rumoon	Brad	\$0.00
Tenorio Jr	Jesse	\$0.00
Manalo	Zachary	\$0.00
Seman	Elias	\$233.93
Camacho Jr	Anthony	\$0.00
Backman	Leeland	\$385.26
Ichihara	Jesse	\$0.00
Li	Piaoran	\$767.53
Zong	Haitao	\$1,584.93
Liu	Hanqin	\$1,693.30
Liang	Xuchong	\$0.00
Lam	Wing Piu Billy	\$0.00
	TOTAL	\$21,041.75