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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



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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

1
2 4. On April 19, 2024 (the “Petition Date”), the Debtor filed a voluntary
3 petition for relief under Chapter 11 of the Bankruptcy Code in the District Court for the
4 Northern Mariana Islands, Bankruptcy Division (the “Court”).

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

9
10 6. The employees are critical to maintaining and preserving the goodwill of
11 the Debtor and safeguarding the Debtor’s assets, making the employees essential to the
12 Debtor’s reorganization.

13
14 7. The employees are paid using different rates of pay depending on job
15 responsibilities and years of service. Employees are paid bi-weekly.

16
17 8. The next regularly scheduled pay date for employees is May 3, 2024, for
18 the period covering from April 15, 2024 through April 28, 2024.

19
20 9. As of the Petition Date, employees also had accrued and unpaid wages for
21 the current pay period.

22
23 10. Attached hereto as Exhibit “A” is a listing of the net pay received by the
24 employees for the period ending April 14, 2024. Since the net pay does not change much
25 from pay period to pay period, this should be sufficient to provide the Court with notice
26 of the amounts involved per employee in the event the requested relief is granted.

27
28 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 27. In a long line of well-established cases under Section 105(a), courts
2 consistently have authorized debtor to pay certain creditors' pre-petition claims where
3 necessary or appropriate to preserve or enhance the value of the debtor's estate for all
4 creditors. See e.g., Miltenberger v. Logansport Railway, 106 U.S. 286 (1882) (payment
5 of pre-receivership claim prior to reorganization permitted to prevent "stoppage of . . .
6 (crucial) business relations . . ."); Gregg v. Metropolitan Trust Co., 197 U.S. 183 (1905)
7 ("[T]he payment of the employees of the (rail)road is more certain to be necessary in
8 order to keep it running than payment of any other class of previously incurred debt"); In
9 re Chateaugay Corp., 80 B.R. 279 (Bankr. S.D.N.Y. 1987), appeal dismissed, 838 F.2d 59
10 (2d Cir. 1988) (approving lower court order authorizing debtor prior to plan stage of case
11 to pay pre-petition wages, salaries, business expenses and benefits); In re Ionosphere
12 Clubs, Inc., 98 B.R. 174, 175-76 (Bankr. S.D.N.Y. 1989) (payment of all pre-petition
13 wages, salaries, reimbursable business expenses and health benefits beyond the [then]
14 \$2,000 maximum set by 11 U.S.C. § 507(a)(3) to current employees of debtor airline
15 authorized); In re Gulf Air, Inc., d/b/a TransOcean Airways, Inc., 112 B.R. 152, 153
16 (Bankr. W.D. La. 1989) (authorizing payment of pre-petition wages, benefits and
17 expenses permitted to "safeguard against loss of going-concern values"); In re Biggs,
18 Inc., 159 B.R. 737, 738 (Bankr. W.D. Pa. 1993) (authorizing payment of \$1.5 million
19 from proceeds of inventory sale to pre-petition wage claims where payment was
20 "necessary to avert a serious threat to the chapter "process").
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25 28. The amounts that the Debtor seeks authority to pay would be accorded
26 priority under Section 507(a)(4) of the Bankruptcy Code. It is likely that these pre-
27 petition employee claims will be paid in full given that Debtor has obtained a DIP
28

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

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

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

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

20 31. Relatively recently, courts in other nearby jurisdictions have granted
21 similar relief. See, e.g., In re The Filipino Community Center, Inc., Bk. No. 18-00109
22 (Bankr. D. Haw. 2018); In re The Minesen Company, Bk. No. 19-00849 (Bankr. D. Haw.
23 2019); In re Kaumana Drive Partners, LLC, Bk. No. 19-01266 (Bankr. D. Haw.2019); In
24 re Titan Imports, Bk. No. 22-00007 (Bankr. D. Guam 2022); In re Boteilho Hawaii
25 Enterprises, Inc., Bk. No. 22-00827 (Bankr. D. Haw. 2022); In re Mulvadi Corporation,
26 Bk. No. 22-00827 (Bankr. D. Haw. 2022).

27 CONCLUSION

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

5 /s/ Charles H. McDonald II
6 _____
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 A
Net 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 |