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Attorneys for Joshua Gray

**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.

Case No. 1:24-bk-00002

**NOTICE OF EMERGENCY PETITION
UNDER LOCAL RULE 7.1(f)
FOR AN ORDER TO SHOW CAUSE
AGAINST LOI LAM SIT**

Hearing Date: TBD
Hearing Time: TBD
Judge: Hon. Ramona V. Manglona

On September 10, 2024, counsel for Joshua Gray and counsel for the CNMI (the “Movants”), both creditors in the above-referenced bankruptcy proceeding, delivered a notice and subpoena for



1 Mr. Loi Lam Sit to appear for a deposition on September 13, 2024 at 9:00 a.m. and to produce certain
2 documents. Based on Mr. Sit's failure to comply with those subpoenas, the Movants hereby petition
3 the Court to issue an Order to Show Cause why it should not enter an order: (i) holding Mr. Sit in
4 contempt; (ii) compelling Mr. Sit to promptly produce the requested documents and appear for a
5 deposition; (iii) imposing a daily fine of \$2,000 until Mr. Sit complies; and (iv) awarding attorneys'
6 fees and costs to the Movants. In the alternative, the Movants request an order explicitly permitting
7 service of a Rule 45 subpoena on Mr. Sit by emailing that subpoena to his local counsel. The Movants'
8 petition is supported by a Memorandum of Law and the Declaration of Aaron Halegua, dated
9 September 13, 2024, and all exhibits attached thereto.

10 The Movants' petition requests that Mr. Sit be required to respond to the Order to Show Cause
11 no later than September 17, 2024 at 12:00 p.m. (ChST); the Movants be permitted to file a reply on
12 September 18, 2024 at 12:00 p.m. (ChST); and that a hearing be set for September 19, 2024 at 9:00
13 a.m. This expedited schedule is necessary in order for the discovery to take place prior to the hearing
14 on the Debtor's pending motion before the Court to approve its bid procedures for the sale of
15 substantially all of the Debtor's assets.

16
17 Respectfully submitted,

18 _____/s/_____

19 Aaron Halegua
20 Bruce Berline
21 John-Patrick M. Fritz

22 Attorneys for Joshua Gray

23 _____/s/_____
J. Robert Glass, Jr.

Attorney for the CNMI

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In re

IMPERIAL PACIFIC INTERNATIONAL
(CNMI), LLC,

Debtor and
Debtor-in-Possession.

Case No. 1:24-bk-00002

**MEMORANDUM OF LAW IN SUPPORT
OF THE EMERGENCY PETITION
UNDER LOCAL RULE 7.1(f)
FOR AN ORDER TO SHOW CAUSE
AGAINST LOI LAM SIT**

Hearing Date: TBD
Hearing Time: TBD
Judge: Hon. Ramona V. Manglona

INTRODUCTION

Judgment creditor Joshua Gray (“Gray”) and the Commonwealth of the Northern Mariana Islands (the “CNMI” (together with Gray, the “Movants”)) delivered a subpoena to Loi Lam Sit (“Mr. Sit”) by emailing it to his local counsel, pursuant to Fed. R. Bankr. P. 9016 and Fed. R. Civ. P. 45 (“Rule 45”), for Mr. Sit to appear at a deposition on September 13, 2024 and produce certain documents, with which Mr. Sit did not comply. The Movants now petition this Court for an Order to Show Cause why Mr. Sit should not be held in contempt until he complies with the subpoena. *See Martinez v. City of Pittsburg*, No. C 11-01017 SBA LB, 2012 WL 699462, at *4 (N.D. Cal. Mar. 1, 2012) (“when a non-party does not comply with a subpoena and does not appear for deposition, the most appropriate procedural step is to file an application for an order to show cause”). In the alternative, the Movants request that the Court authorize service of a subpoena on Mr. Sit via email to his counsel in the CNMI, Joey P. San Nicolas.

BACKGROUND

Mr. Sit is a resident of Hong Kong who is involved in the beauty and cosmetics business. (ECF No. 140 (“Sit Supplemental Declaration”) ¶¶ 9–10). In his Supplemental Declaration, he does not report any experience in the hotel or real estate development business. (*Id.*) Mr. Sit claims that he has no relationship with the Debtor or its principals. (*Id.* ¶¶ 17–20). Nonetheless, he initially offered to provide DIP financing in the amount of \$7 million (*id.* ¶ 22), and after the Debtor adjusted its request, is now serving as the DIP lender and providing up to \$1.4 million in financing. (ECF No. 144).

On August 10, 2024,¹ the Debtor filed its motion to approve bid procedures for the sale of substantially all of the Debtor’s assets. (ECF No. 182 (“Bid Procedures Motion”). The Bid Procedures Motion proposes that Mr. Sit serve as the stalking horse bidder who, if he is not outbid, will purchase

¹ The dates cited in this motion are all listed in Chamorro Standard Time, unless otherwise noted. Accordingly, the time stamp on some of the emails attached as exhibits may show a different time.

1 virtually all of the Debtor’s assets for \$10 million. (*Id.* at 15–17). No explanation was provided as to
2 the origin of the \$10 million figure. Despite stating that Mr. Sit has no relationship with the Debtor,
3 the Bid Procedures Motion nonetheless initially proposed that he be permitted to submit a “credit bid”
4 that would effectively place him ahead of the Debtor’s secured creditors. (*Id.* at 17). The Bid
5 Procedures Motion also proposed that Mr. Sit be provided a breakup fee if he is not the successful
6 bidder without explaining how that amount was negotiated or derived. (*Id.* at 18). After numerous
7 objections to the Bid Procedures Motion, including by the Movants (ECF Nos. 207, 215), the Debtor
8 then stated that Mr. Sit had agreed to allot \$1 million of the purchase price to the Debtor’s personal
9 property—without explanation of how that number was determined. (ECF No. 223 at 5).

10 When Mr. Sit was proposed as the DIP lender, parties raised concerns that he was a foreign
11 citizen residing in Hong Kong and thus it would be extremely difficult to serve him in connection with
12 this bankruptcy proceeding. In response, Mr. Sit then hired a local counsel in the CNMI, Mr. San
13 Nicolas, who filed his Notice of Appearance on June 20, 2024. (ECF No. 131). Since then, Mr. San
14 Nicolas has appeared in these proceedings and made representations on behalf of Mr. Sit. (*See, e.g.*,
15 ECF Nos. 134, 144). Mr. San Nicolas also filed a declaration on behalf of Mr. Sit in these proceedings.
16 (ECF No. 140). Further, since Mr. San Nicolas filed his Notice of Appearance, parties have served
17 Mr. Sit by delivering electronic notices to Mr. San Nicolas, either by email or through ECF, without
18 any objection. (*See, e.g.*, ECF Nos. 161, 227).²

19 On September 9, 2024, the CNMI sent an email to Mr. San Nicolas stating that the CNMI and
20 other creditors sought to depose Mr. Sit in advance of the hearing on the Bid Procedures Motion,
21 scheduled for September 19, 2024, and requesting dates that would be convenient for Mr. Sit.

22
23 ² The Movants both opposed the Debtor’s Bid Procedures Motion and believe that it should be denied. However, in the event that the Court is not inclined to deny the Bid Procedures Motion outright, the Movants request that any final decision on the Motion at least be deferred until Movants have an opportunity to depose Mr. Sit.

1 (Halegua Decl., ¶ 3, Ex. A). Mr. San Nicolas responded by stating that he would reach out to Mr. Sit
2 and get back to them. He also stated that he would get back to the CNMI about any potential objections
3 with respect to timeliness. (*Id.* ¶ 3, Ex. A). After not hearing back from Mr. San Nicolas, on September
4 10, 2024, Gray issued a subpoena for Mr. Sit to appear for a deposition on September 13, 2024 at 9:00
5 a.m., and the CNMI issued a subpoena for a deposition at the same time and also a request that Mr.
6 Sit produce documents concerning his ability to fund a \$150 million hotel project. (*Id.* ¶¶ 4–5, Exs. B,
7 C, D, E). The subpoenas were sent by email to Mr. San Nicolas at the address listed on the ECF docket.

8 After receiving the subpoenas, Mr. San Nicolas did not confirm that Mr. Sit would appear for
9 a deposition, nor did he provide alternate dates. Instead, he responded by sending two decisions on
10 the issue of taking testimony from individuals in mainland China. (*Id.* ¶ 8, Ex. F). Gray responded
11 with numerous case decisions stating that the concerns present in mainland China do not apply to
12 Hong Kong, and in which federal district courts have permitted the taking of testimony from
13 individuals in Hong Kong. (*Id.*). *See, e.g., Zhizheng Wang v. Hull*, No. C18-1220RSL, 2020 WL
14 4734930, *2 (W.D. Wash. June 22, 2020) (deposition in Hong Kong via video conferencing
15 permitted). Mr. San Nicolas then replied that “[a]lthough I appreciate your authorities, I still believe
16 Mr. Sit, who is a citizen of the People’s Republic of China, must get permission from the Chinese
17 authorities, pursuant to the Hague Conventions.” (*Id.* ¶ 9, Ex. G). Gray requested that Mr. San Nicolas
18 provide some authority for his position, but none was provided. (*Id.*). Mr. San Nicolas further stated
19 that he is not available on the morning of Friday, September 13, 2024; but when asked for alternate
20 dates, Mr. San Nicolas did not provide any. (*Id.*).

21 Instead, later that day, Mr. San Nicolas sent an email stating that Mr. Sit had not waived
22 personal service of the subpoena and did not authorize Mr. San Nicolas to accept the subpoena on his
23 behalf. (*Id.* ¶ 10, Ex. H). Gray expressed his understanding that the Court had required Mr. Sit to
obtain local counsel precisely for this reason, and asked for an explanation for Mr. Sit’s refusal. (*Id.*).

1 Gray also informed Mr. San Nicolas that he believes service was proper because Mr. San Nicolas had
2 the apparent authority to accept service and cited numerous relevant legal authorities. (*Id.*). Gray
3 further stated the intention of Gray and the CNMI to file a motion to compel the deposition if Mr. Sit
4 did not comply, and asked whether there was a date and time to which Mr. Sit would agree. No
5 response was received. (*See id.*, Ex. I).

6 On September 12, 2024, counsel for Gray and Sit had a meet and confer via WhatsApp about
7 the subpoena. (*Id.* ¶ 11, Ex. I). Gray expressed that his preference would be to avoid filing a motion
8 to compel the deposition or sanction Mr. Sit, and requested that, by the end of the day, Mr. San Nicolas
9 provide a date and time prior to the September 19 hearing for a Zoom deposition. (*Id.*). Mr. San
10 Nicolas said that he would try. (*Id.*). As of the scheduled time for the deposition, no response from
11 Mr. Sit had been received. Mr. Sit also did not appear for his deposition noticed for September 13,
12 2024 at 9:00 a.m. (*Id.* ¶¶ 12–13).

13 ARGUMENT

14 “A nonparty’s compliance with a subpoena may warrant contempt sanctions.” *Dallas Buyers*
15 *Club, LLC v. Doe*—71.238.61.141, No. 3:16-cv-00551-AC, 2016 WL 6208268, *2 (D. Or. Oct. 21,
16 2016). A finding of contempt is appropriate when a party disobeys “a specific and definite court order
17 by failure to take all reasonable steps within the party’s power to comply.” *In re Dual-Deck Video*
18 *Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993). The moving party has the burden
19 of showing by clear and convincing evidence that the contemnors violated a court order. The burden
20 then shifts to the contemnors to demonstrate why they were unable to comply with the subpoena.
21 *Martinez v. City of Avondale*, No. CV-12-1837-PHX-LOA, 2013 WL 5705291, *3 (D. Ariz. Oct. 18,
22 2013). The contempt need not be willful and there is no good faith exception to the requirement of
23 obedience to a court order.” *Walsh v. Adventures International, LLC*, No. 2:21-cv-00905-RFB-EJY,
2022 WL 4280276, *2 (D. Nev. Sept. 15, 2022) (quoting *In re Dual-Deck Video*, 10 F.3d at 695).

A. The Court should issue an Order to Show Cause requiring Mr. Sit to explain why he should not be held in contempt for failing to comply with the subpoenas.

Bankruptcy Rule 9016 states that Rule 45 applies to cases under the Bankruptcy Code. In the event that a third-party who is properly served with a subpoena under Rule 45 does not comply, the court issuing the subpoena may hold that person in contempt. Fed. R. Civ. P. 45(g). Accordingly, the Movants request that the Court issue an Order to Show Cause requiring Mr. Sit to explain why he should not be held in contempt. *Martinez*, 2012 WL 699462, at *4.

Rule 45 provides rules regarding the contents of a proper subpoena and service of the subpoena. Fed. R. Civ. P. 45(a)–(b). When both of these elements are satisfied, then the party receiving the subpoena is obligated to comply. *Martinez*, 2012 WL 699462, at *4. Here, consistent with Rule 45(a), the subpoenas stated the court from which they were issued, the title of the action and case number, a command to appear at a specific time and place, and included the text of Rule 45(d) and (e). Fed. R. Civ. P. 45(a). Hence, the subpoenas were proper in this respect. *Martinez*, 2012 WL 699462, at *4.

Rule 45(b) states that proper service requires “requires delivering a copy to the named person.” In this case, the subpoena was delivered to Mr. Sit by emailing a copy to the CNMI-based attorney representing Mr. Sit in these proceedings. In the *Procom* case, the district court found that delivering a subpoena for a deposition to the local attorney of a third-party witness who resided outside the United States was proper service under Bankruptcy Rule 9016.³ *In re Procom America LLC*, 638 B.R. 634, 638 (M.D. Fl. 2022) (“This Court, like many others, reads Rule 45, which requires a subpoena to be ‘delivered,’ to permit substitute service of a subpoena so long as the substitute service is reasonably calculated to ensure the subpoena reaches the named person”); *id.* at 644 (“the standard

³ In *Procom*, the subpoena was for a deposition under Bankruptcy Rule 2004 instead of Bankruptcy Rule 7030, however, both of these discovery tools employ the procedures set forth in Bankruptcy Rule 9016 (which incorporates Rule 45) to deliver the subpoena.

1 for determining whether service is effective is ... [that] the method of service must be reasonably
2 calculated to give notice and an opportunity to respond”). The *Procom* court also reasoned that where
3 a party resides abroad, courts regularly approve of service made upon the local attorney under Rule
4 4(f), and it would be “perverse” if “the standard for service of a subpoena on a nonparty witness
5 under Rule 45 would be more rigorous than the standard for serving a summons and complaint under
6 Rule 4.” *Id.* at 641. In the Ninth Circuit, district courts have also permitted service upon the local
7 attorney of a party residing abroad to satisfy Rule 4(f). *See In re Focus Media Inc.*, 387 F.3d 1077,
8 1082 (9th Cir. 2004) (finding that “numerous bankruptcy and district court cases have held that
9 implied authority to accept service of process is permissible” and holding that service on the lawyer
10 of a party to a bankruptcy proceeding was proper service); *id.* at 1079 (“a lawyer can be deemed to be
11 the client’s implied agent to receive service of process when the lawyer repeatedly represented that
12 client in the underlying bankruptcy case, and where the totality of the circumstances demonstrates the
13 intent of the client to convey such authority”).

14 The facts here are similar to those in *Procom* and *Focus Media*. Mr. San Nicolas was retained
15 to address concerns that it would be difficult to serve Mr. Sit personally. (ECF No. 131). Mr. San
16 Nicolas then appeared at multiple hearings and made statements on behalf of Mr. Sit. Documents were
17 then routinely served upon Mr. Sit by electronic delivery to Mr. San Nicolas, without any objection.
18 Under such circumstances, it is fair to conclude that Mr. San Nicolas had implied authority to accept
19 service on behalf of Mr. Sit, and that electronic delivery of the subpoena to Mr. San Nicolas was
20 reasonably calculated to notify Mr. Sit. Like the attorney in *Procom*, Mr. San Nicolas is under an
21 obligation pursuant to Rule 1.4(a)(3) of the ABA Model Rules of Professional Conduct to “keep the
22 client reasonably informed about the status of the matter.”⁴ Finally, numerous courts have found

23
...
⁴ Rule 3(1) of the Northern Mariana Islands Rules of Attorney Discipline and Procedure provide that an attorney may be disciplined for failure to comply with “[a]ny act or omission that violates the most

1 delivery via email (rather than personal service) to be sufficient where it was reasonable to expect that
 2 this would give the party notice. *See Green v. Baca*, No. CV 02-204744MMMMANX, 2005 WL
 3 283361, *1 n.1 (C.D. Cal. Jan. 31, 2005) (“The court agrees, however, with those that have held that
 4 effective service under Rule 45 is not limited to personal service”); *In re Pacifico Sur Grp. LLC*, No.
 5 19-22057-RAM, 2020 WL 3120327, *2 (Bankr. S.D. Fla. June 11, 2020) (service of subpoena via
 6 email and mail deemed proper); *King v. Crown Plastering Corp.*, 170 F.R.D. 355, 356 (E.D.N.Y.
 7 1997) (personal service not required “so long as service is made in a manner that reasonably insures
 8 actual receipt of the subpoena by the witness”). In this case, there is no dispute that Mr. San Nicolas
 9 received the subpoenas in question or that he is in communication with Mr. Sit. Accordingly, the Court
 10 should find that the Movants subpoenas were properly served on Mr. Sit.

11 It is also clear that Mr. Sit did not comply with the subpoenas. Mr. Sit did not produce any
 12 documents by September 13, 2024. He also did not appear in Saipan for his deposition, nor did he
 13 agree to appear via Zoom on that day or time. The Movants had also offered to accommodate Mr. Sit
 14 by scheduling the deposition at a time that was convenient for him and his counsel; however, Mr. San
 15 Nicolas never provided a time that his client was willing to be deposed, but instead repeatedly
 16 presented frivolous objections to the subpoena—which also weighs in favor of finding that service
 17 was proper. *See Chambers v. Whirlpool Corp.*, No. SA CV 11-1733 FMO (JCGx), 2016 WL 9451361,
 18 *2 (C.D. Cal. 2016) (granting motion to compel compliance with Rule 45 subpoena despite argument
 19
 20

21 recent version of the Model Rules of Professional Conduct of the American Bar Association.” The
 22 NMI rules are available at: <https://cnmilaw.org/pdf/courtrules/R07.pdf>. The ABA Model Rules of
 23 Professional Conduct are available online at:
https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_4_communications/.

1 that service was improper because “the court is troubled by the objectors’ unwillingness to accept
2 service”).

3 **B. Mr. Sit should be fined \$2,000 per day until he complies with the subpoena and should**
4 **be ordered to pay the Movants’ reasonable attorneys’ fees and costs.**

5 The Court has the power to impose a civil contempt sanction that is designed to encourage Mr.
6 Sit to comply with the subpoena. *United States v. Torrance*, No. 2:18-cv-1631-JAM-EFB-PS, 2020
7 WL 6337707, *2 (E.D. Cal. 2020); *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468,
8 1481 (9th Cir. 1992). In determining an appropriate sanction, courts “consider the character and
9 magnitude of the harm threatened by continued contumacy, and the probable effectiveness of any
10 suggested sanctions.” *Torrance*, 2020 WL 6337707, at *3 (quoting *General Signal Corp. v. Donallco,*
11 *Inc.*, 787 F.2d 1376, 1380 (9th Cir. 1986)). Here, based on Mr. Sit’s initial willingness to loan up to
12 \$7 million to the Debtor and then to purchase the Debtor’s assets for \$10 million, it is clear that his
13 assets are substantial and a significant sanction will be necessary to impact his behavior. Therefore,
14 the Movants propose that the Court set a sanction of \$2,000 per day until Mr. Sit complies with the
15 subpoena. *See Richmark Corp.*, 959 F.2d at 1481 (noting \$10,000 per day sanction that was still
16 insufficient to coerce compliance); *Wang v. IPI*, No. 18-cv-0030 (D. N. Mar. I.), ECF No. 290 (issuing
17 an order to show cause why IPI’s Chairwoman Lijie Cui should not be held in contempt and a daily
18 sanction of \$10,000 imposed); *State Farm Mut. Auto Ins. Co. v. Cohan*, No. CV 09-2990(JS)(WDW),
19 2010 WL 3000685, *3 (E.D.N.Y. July 28, 2010) (appropriate sanctions for failure to comply with
20 subpoenas included a \$25,000 daily sanction that doubled each day until party complied).

21 The Court may award the payment of attorneys’ fees and costs as a compensatory civil
22 contempt sanction. *In re Sula, Inc.*, No. 215-BK-23350-WB, 2016 WL 3960513, *4 (Bankr. C.D. Cal.
23 July 15, 2016). Here, such an award is appropriate since Mr. Sit’s conduct has caused the Movants to
expend a substantial number of attorneys’ hours, including by preparing this petition.

C. In the alternative, the Movants request that the Court order that Mr. Sit may be served via email to Mr. San Nicolas.

In the event that the Court finds that Mr. San Nicolas did not have implied authority to accept service on Mr. Sit's behalf, the Movants request that the Court issue an order permitting service upon Mr. Sit via his local counsel in the CNMI. As noted above, district courts routinely permit service of a Rule 45 subpoena by means other than personal service that are reasonably calculated to ensure that the party receives notice, including service via the party's attorney. *Green*, 2005 WL 283361, at *1 n.1 (permitting substitute service because "the language of Rule 45 does not explicitly require personal service of a subpoena"); *OL Private Counsel, LLC v. Olson*, No. 2:21-cv-00455, 2023 WL 2788634, *2 (D. Utah April 5, 2023) (granting leave to serve subpoenas on nonparties by email to the party and to counsel); *King*, 170 F.R.D. at 356 (personal service of a Rule 45 subpoena is not required "so long as service is made in a manner that reasonably insures actual receipt of the subpoena by the witness"); *Western Resources, Inc. v. Union Pacific R. Co.*, No. 00-2043-CM, 2002 WL 1822432, at *2 (D. Kan. July 23, 2002) (service of subpoena on witness' attorney deemed sufficient where it "reasonably insur[ed]" that the witness received notice); *In re Procom*, 638 B.R. at 644 (service on party's counsel sufficient because it "virtually guaranteed" that party would receive notice). It is particularly appropriate to authorize such alternative service where there is a concern that the party is seeking to evade service or avoid discovery. *See Armed Forces Bank NA v. Dragoo*, No. CV-17-00786-PHX-ROS, 2018 WL 8621583, *2 (D. Ariz. May 23, 2018) (stating that "[i]n the particular context of a non-party evading service of a subpoena, many courts have concluded alternative service must be allowed" and permitting the moving party to proceed with alternative service). Thus, in this case, it is appropriate to permit service on Mr. Sit to be made by emailing the subpoena to Mr. San Nicolas with an instruction that he immediately notify Mr. Sit.

CONCLUSION

The Movants request that the Bid Procedures Motion be denied for the reasons set forth in their oppositions. However, at a minimum, before the Court grants the motion—which is likely to result in a transfer of the Debtor’s assets to Mr. Sit—the Movants and other creditors have an opportunity to depose Mr. Sit about his ability to pay the bid price, ability to fund and oversee the completion of the hotel, the value that he ascribed to the personal property and the basis for that valuation, and other important topics. Accordingly, the Movants request that Mr. Sit be ordered to comply with the Movants’ subpoenas to appear for a deposition and produce documents, as well as request that the Court continue the hearing on the Bid Procedures Motion—or at least withhold a decision—until such limited discovery may be concluded.⁵

Dated: September 15, 2024

Respectfully submitted,

_____/s/_____
 Aaron Halegua
 Bruce Berline
 John-Patrick M. Fritz

Attorneys for Joshua Gray

_____/s/_____
 J. Robert Glass, Jr.

Attorney for the CNMI

⁵ The Movants, Michael Dotts, and the Committee all agree that the hearing on the Bid Procedures Motion should be continued and scheduled on the same day as the motion to employ Keen-Summit as the real estate broker, as the two issues are intertwined. This would also permit more time to take discovery from Mr. Sit. As the Debtor has now consented to extend the bidding period beyond the end of 2024 to February 28, 2025, there is little prejudice in adjourning the hearing on the Bid Procedures Motion for one week. (ECF No. 231 at 4). However, the Debtor declined to agree to this proposal, but without providing any explanation. (Halegua Decl. ¶ 14). Therefore, the Movants, Mr. Dotts, and the Committee will be submitting a motion to continue the hearing on the Bid Procedures Motion.

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Attorneys for Joshua Gray

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In re

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**DECLARATION OF AARON HALEGUA
IN SUPPORT OF THE EMERGENCY
PETITION UNDER LOCAL RULE 7.1(f)
FOR AN ORDER TO SHOW CAUSE
AGAINST LOI LAM SIT**

Hearing Date: TBD
Hearing Time: TBD
Judge: Hon. Ramona V. Manglona

1 I, AARON HALEGUA, hereby declare:

2 1. I am over eighteen years of age and am fully competent to testify to the facts set forth in this
3 declaration. I, along with Bruce Berline and John-Patrick M. Fritz, represent judgment creditor Joshua
4 Gray in this bankruptcy proceeding.¹

5 2. I am submitting this declaration in support of the petition for Order to Show Cause why Loi
6 Lam Sit (“Mr. Sit”) should not be entered that holds Mr. Sit in contempt for failing to appear for his
7 deposition noticed for September 13, 2024 at 9:00 a.m.²

8 3. On September 9, 2024, J. Robert Glass, Jr. of the CNMI Attorney General’s Office emailed
9 Mr. Sit’s attorney, Joey P. San Nicolas, informing him that the CNMI and other creditors, including
10 Joshua Gray, sought to depose Mr. Sit in connection with the Debtor’s motion to approve the bidding
11 procedure. Later that day, Mr. San Nicolas responded, stating that he would reach out to Mr. Sit and
12 get back to Mr. Glass, including about any potential objections. A copy of this email exchange is
13 attached as **Exhibit A**.

14 4. On September 10, 2024, after not hearing back from Mr. San Nicolas, I delivered a notice and
15 subpoena for the deposition of Mr. Sit on September 13, 2024 to Mr. Sit by emailing it to his counsel,
16 Mr. San Nicolas. A copy of the email is attached as **Exhibit B**, and a copy of Gray’s notice and
17 subpoena is attached as **Exhibit C**.

18 5. After receiving Gray’s subpoena, Mr. San Nicolas first responded that he would provide a
19 formal response by the next day, and noted that Mr. Sit is in Hong Kong and would not be able to
20 appear in person.

21
22 _____
23 ¹ The defined terms used herein shall have the same meaning as in the Memorandum of Law in Support
of the Petition for an Order to Show Cause against Loi Lam Sit filed herewith.

² Dates and times are provided in Chamorro Standard Time, unless otherwise noted. Thus, times stated
in the declaration and accompanying brief may differ from the time stamp on my emails.

1 6. On the same day, September 10, 2024, Mr. Glass also delivered a notice and subpoena for the
2 deposition of Mr. Sit and for the production of documents by emailing it Mr. San Nicolas. A copy of
3 the email is attached as **Exhibit D**, and a copy of the CNMI's notice and subpoena is attached as
4 **Exhibit E**.

5 7. After receiving the CNMI's subpoena, Mr. San Nicolas again responded that he will provide
6 a formal response by the next day.

7 8. Later that day, Mr. San Nicolas sent two decisions on the issue of taking testimony from
8 witnesses in mainland China. In response, I provided several decisions showing that depositions in
9 Hong Kong are permitted. A copy of this email exchange is attached as **Exhibit F**.

10 9. Mr. San Nicolas then responded that despite the legal authority provided, he still believes that
11 Mr. Sit must get permission from the Chinese authorities pursuant to the Hague Convention. I
12 requested that he provide any legal authority for his position, but did not receive a response. A copy
13 of this email exchange is attached as **Exhibit G**.

14 10. On September 12, 2024, Mr. San Nicolas emailed me, the CNMI, and others, stating that Mr.
15 Sit did not waive personal service and did not authorize Mr. San Nicolas to accept the subpoena on
16 his behalf. In response, I sent an email to Mr. San Nicolas stating my understanding that the Court
17 instructed Mr. Sit to get counsel precisely to avoid this issue, and asking what legitimate reason Mr.
18 Sit had to insist on personal service. After receiving no response, I also sent an email to Mr. San
19 Nicolas stating our position that Mr. San Nicolas at least has implied authority to receive service for
20 Mr. Sit and provided him with relevant legal authority. Mr. San Nicolas then responded that he would
21 get back to me later that day. A copy of this email exchange is attached as **Exhibit H**.

22 11. After receiving no response from Mr. San Nicolas, I reached out to him via WhatsApp and we
23 had a meet and confer on September 12, 2024. During that time, I expressed that the preference of
Gray and the CNMI would be to avoid filing a motion to compel or Order to Show Cause, and

1 therefore asked that, by the end of the day, Mr. Sit provide a date and time prior to the hearing that he
2 would be available for a deposition by Zoom. Mr. San Nicolas said that Mr. Sit had a very busy
3 schedule, but that he would try. The conversation was memorized in email that I sent Mr. San Nicolas,
4 which is attached as **Exhibit I**.

5 12. As of September 13, 2024 in Saipan, no response from Mr. Sit had been received.

6 13. I have also been informed by Mr. Berline that Mr. Sit did not appear at his office on September
7 13, 2024 for a deposition.

8 14. After Mr. Sit failed to appear for his deposition, I proposed that the hearing on the Debtor's
9 Bid Procedures Motion be adjourned one week to the same date as the hearing to employ the real
10 estate broker, as the two issues are intertwined and it would permit more time to get discovery from
11 Mr. Sit. The CNMI, the secured creditors (U.S.A. Fanter and Michael Dotts), and the Committee all
12 agreed with this proposal. The Debtor did not agree without providing any explanation.

13 15. This petition is filed on an emergency basis because the discovery relating to Mr. Sit must
14 occur in advance of hearing on the Debtor's Bid Procedures Motion. If the normal motion schedule is
15 followed, the deposition and production of documents will occur too late. Mr. Sit's counsel was
16 informed that the Movants would be requesting such relief if a date for Mr. Sit's deposition was not
17 provided; however, Mr. Sit's counsel never responded with such information. All other parties were
18 informed via email that the Movants would seek this relief Mr. Sit did not agree to comply with the
19 subpoenas, and a copy of this petition will be emailed to them immediately after it is filed.

20 I declare under penalty of perjury that the foregoing is true and correct. Executed in New York,
21 New York on the 15th day of September, 2024.

22
23 /s/
AARON HALEGUA

Attorney for Plaintiff

Exhibit A



Madeleine Cavanagh <madeleineccavanagh@gmail.com>

Re: Deposition of Mr. Sit

Robert Glass <robby_glass@cnmioag.org>

Mon, Sep 9, 2024 at 2:07 AM

To: "John-Patrick M. Fritz" <jpf@lnbyg.com>, madeleineccavanagh@gmail.com, Aaron Halegua <aaron.halegua@gmail.com>

----- Forwarded message -----

From: **Joey P. San Nicolas** <jpsn@sannicolaslaw.net>

Date: Mon, Sep 9, 2024 at 4:11 PM

Subject: Re: Deposition of Mr. Sit

To: Robert Glass <robby_glass@cnmioag.org>

Cc: Aaron Halegua <ah@aaronhalegua.com>, Bruce Berline <bberline@gmail.com>, Michael Dotts <mdotts@dottslaw.law>, Aram Ordubegian <aram.ordubegian@afslaw.com>, Verbrugge, Neil (USTP) <Neil.Verbrugge@usdoj.gov>, Chuck Choi <cchoi@hibklaw.com>

Hello Robbie:

Thanks for your email. I will reach out to Mr. Sit and get back to you. I will also get back to you about objections we may have i.e. timeliness and the fact that Mr. Sit is not a party to the bankruptcy.

Best regards,

JP

On Mon, Sep 9, 2024 at 2:28 PM Robert Glass <robby_glass@cnmioag.org> wrote:

Dear JP,

We are writing to inform you that the Commonwealth and various creditors, including Joshua Gray and Dotts Law Firm, seek to depose Mr. Sit in connection with the Debtor's motion to approve the bidding procedure in which Mr. Sit serves as the stalking horse bidder. A formal deposition notice will be forthcoming later today or tomorrow. However, rather than blindly notice a date and time, we would like to try to find a time that works for Mr. Sit. Therefore, we ask that you provide times on either Thursday (9/12), Friday (9/13), Saturday (9/14), Sunday (9/15) or Monday (9/16) that Mr. Sit is available for the deposition. If he cannot come to Saipan, we are able to do it via Zoom. Also, please advise whether he will need an interpreter. Given the upcoming hearing date, we ask that you will respond today with this information. We look forward to hearing from you.

Sincerely,

--

**J. Robert Glass, Jr.**

Chief Solicitor
Office of the Attorney General
Commonwealth of the Northern Mariana Islands
Caller Box 10007, Capitol Hill
Saipan, MP 96950
Civil: (670) 237-7500 | Criminal: (670) 237-7600

Notice: The information contained in this document may be legally privileged and confidential information intended only for the use of the individual or entity named herein. If you have received this document in error, please reply to the sender via email or notify the Office of the Attorney General at [670-237-7500](tel:670-237-7500) immediately that you received the message in error and then delete it. Thank you.

--

Joey P. San Nicolas

Attorney at Law
SAN NICOLAS LAW OFFICE, LLC
3813 Mestisa Ave. Dandan Village, Saipan
P.O. Box 505335
Saipan, MP 96950
Telephone: (670) 288-1073
Mobile: (670) 287-1973
Email: jpsn@sannicolaslaw.net

CONFIDENTIALITY NOTICE: This may be a confidential communication that may contain sensitive or privileged information intended solely for the individual(s) to which it is addressed. Any review, retransmission, dissemination, use, or action taken upon this information by persons or entities other than the intended recipient is prohibited and may constitute a violation of statute. If you are not the intended recipient or believe you received this communication in error, please contact the sender and delete the material from your computer.

[Quoted text hidden]

Exhibit B



Aaron Halegua <aaron.halegua@gmail.com>

Notice and Subpoena for Deposition of Mr. Sit

Aaron Halegua <ah@aaronhalegua.com>

Mon, Sep 9, 2024 at 11:09 PM

To: "Joey P. San Nicolas" <jpsn@sannicolaslaw.net>

Cc: Robert Glass <robby_glass@cnmioag.org>, bruce berline <bberline@gmail.com>, Michael Dotts <mdotts@dottslaw.law>, "Ordubegian, Aram" <aram.ordubegian@afslaw.com>, "Verbrugge, Neil (USTP)" <Neil.Verbrugge@usdoj.gov>, Chuck Choi <cchoi@hibklaw.com>, "John-Patrick M. Fritz" <jpf@lnbyg.com>

Dear JP,

As we have not heard back from you regarding a date, we are sending you a notice and subpoena for the deposition of Mr. Sit on Friday, September 13, 2024. Please find these documents attached. We are willing to do the deposition by Zoom, unless you insist that it be in person, in which case we can host you at Bruce Berline's office in Saipan. Please let us know by the end of the day which arrangement you prefer so that we may make the appropriate preparations. I have been informed that by the close of business today, CNMI will also be issuing a subpoena for Mr. Sit's deposition on September 13. We are happy to coordinate these together to minimize any burden on Mr. Sit.

Sincerely,
Aaron Halegua

--
Aaron Halegua
Aaron Halegua, PLLC
524 Broadway, 11th Floor
New York, NY 10012
T: (646) 854-9061
E: ah@aaronhalegua.com
W: www.aaronhalegua.com

 **Gray Deposition Notice and Subpoena for Sit (2024.09.09).pdf**
311K

Exhibit C

Bruce Berline
LAW OFFICE OF BRUCE BERLINE, LLC
Security Title Building
Isa Drive, Capitol Hill
P.O. Box 5682 CHRB
Saipan, MP 96950
Tel.: (670) 233-3663
Email: bberline@gmail.com

Aaron Halegua
AARON HALEGUA, PLLC
524 Broadway, 11th Floor
New York, New York 10012
Tel.: (646) 854-9061
Email: ah@aaronhalegua.com

John-Patrick M. Fritz
LEVENE, NEALE, BENDER, YOO & GOLUBCHIK L.L.P.
2818 La Cienega Ave.
Los Angeles, CA 90034
Tel: (310) 229-3395
Email: jpf@lnbyg.com

Attorneys for Joshua Gray

**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.

Case No. 1:24-bk-00002

**CREDITOR JOSHUA GRAY'S NOTICE OF
REMOTE DEPOSITION OF LOI LAM SIT
PURSUANT TO FEDERAL RULE OF
BANKRUPTCY 7030**

Date: September 13, 2024

Time: 9:00 a.m. (ChST)

Location: via Zoom (or another Web-based
deposition option)

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure,
incorporated herein by Rule 7030 of the Federal Rules of Bankruptcy Procedure, Joshua Gray will

1 take the deposition upon oral examination of Loi Lam Sit, the stalking horse bidder identified in the
2 Debtor's Motion to Approve Bid Procedures for Sale of Substantially All of the Debtor's Assets and
3 Related Relief (ECF No. 182), on September 13, 2024, commencing at 9:00 a.m. (ChST) via Zoom
4 (or another web-based deposition option) through a web link to be provided. If the parties change their
5 position and demand that the deposition occur in person, then after appropriate meet and confer the
6 deposition might occur at the Law Office of Bruce Berline, Security Title Building, Isa Drive, Capitol
7 Hill, Saipan, MP 96950. The deposition shall continue from day-to-day until completed.

8 **PLEASE TAKE FURTHER NOTICE** that Defendant's deposition may be recorded by
9 stenographic means and/or be recorded digitally or electronically utilizing audio or video technology
10 (including by the "Record" function on Zoom), and/or by videotape. Gray may also utilize software
11 to generate the instant visual display of testimony. The deposition will be conducted utilizing the
12 "Share Screen" function on Zoom to view exhibits or another similar paperless virtual display
13 platform. The parties are advised that in lieu of a paper set of exhibits, the exhibits may be provided
14 and displayed digitally to the deposition officer, deponent, parties and counsel. The exhibits will be
15 compiled by the deposition officer for the purposes of exhibit stamping and ultimate production of the
16 final certified transcript.
17

18
19 Dated: September 9, 2024
20 New York, New York

21
22 /s/ Aaron Halegua
23 AARON HALEGUA
24 BRUCE BERLINE
JOHN-PATRICK M. FRITZ

Attorneys for Joshua Gray

UNITED STATES BANKRUPTCY COURT

District of the Northern Mariana Islands

In re Imperial Pacific International (CNMI), LLC

Debtor

(Complete if issued in an adversary proceeding)

Case No. 24-0002

Chapter 11

Plaintiff

v.

Adv. Proc. No.

Defendant

SUBPOENA TO TESTIFY AT A DEPOSITION
IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Loi Lam Sit

(Name of person to whom the subpoena is directed)

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this bankruptcy case (or adversary proceeding). If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

PLACE via Zoom (or another web-based deposition option), or at the

DATE AND TIME

Law Office of Bruce Berline, Security Title Building, Isa Drive, Saipan, MP

Sept. 13, 2024, 9:00 a.m. (ChST)

The deposition will be recorded by this method:

Zoom or similar recording

☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/09/2024

CLERK OF COURT

OR

Aaron Halegua

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party)

Joshua Gray

, who issues or requests this subpoena, are:

524 Broadway, 11th Floor, New York, NY, 10002, ah@aaronhalegua.com, 646-854-9061

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

(A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt. The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Exhibit D



Aaron Halegua <aaron.halegua@gmail.com>

Re: Notice and Subpoena for Deposition of Mr. Sit

Robert Glass <robby_glass@cnmioag.org>

Tue, Sep 10, 2024 at 3:26 AM

To: "Joey P. San Nicolas" <jpsn@sannicolaslaw.net>

Cc: bruce berline <bberline@gmail.com>, Aaron Halegua <ah@aaronhalegua.com>, Michael Dotts <mdotts@dottslaw.law>, "Ordubegian, Aram" <aram.ordubegian@afslaw.com>, "Verbrugge, Neil (USTP)" <Neil.Verbrugge@usdoj.gov>, Chuck Choi <cchoi@hibklaw.com>, "John-Patrick M. Fritz" <jpf@lnbyg.com>, Charles McDonald <charles@mcdonald.law>, Allison Ito <aito@hibklaw.com>, keith.chambers@chamberslawcnmi.com

Mr. San Nicolas,

Please find attached the Commonwealth's Notice of Deposition and for Production of Documents for your client, Mr. Loi Lam Sit on September 13, 2024 by Zoom. As I am aware you have also received a notice of deposition from Mr. Halegua, we are also willing to coordinate with you on the time and place of the deposition. We are also willing to coordinate with you on the production of documents as well.

This notice was previously sent to Mr. Chuck Choi and the Debtor's attorneys in compliance with Fed. R. Civ. P. 45.

Sincerely,

On Tue, Sep 10, 2024 at 1:09 PM Aaron Halegua <ah@aaronhalegua.com> wrote:

Dear JP,

As we have not heard back from you regarding a date, we are sending you a notice and subpoena for the deposition of Mr. Sit on Friday, September 13, 2024. Please find these documents attached. We are willing to do the deposition by Zoom, unless you insist that it be in person, in which case we can host you at Bruce Berline's office in Saipan. Please let us know by the end of the day which arrangement you prefer so that we may make the appropriate preparations. I have been informed that by the close of business today, CNMI will also be issuing a subpoena for Mr. Sit's deposition on September 13. We are happy to coordinate these together to minimize any burden on Mr. Sit.

Sincerely,
Aaron Halegua

--
Aaron Halegua
Aaron Halegua, PLLC
524 Broadway, 11th Floor
New York, NY 10012
T: (646) 854-9061
E: ah@aaronhalegua.com
W: www.aaronhalegua.com



J. Robert Glass, Jr.

Chief Solicitor
Office of the Attorney General
Commonwealth of the Northern Mariana Islands
Caller Box 10007, Capitol Hill
Saipan, MP 96950
Civil: (670) 237-7500 | Criminal: (670) 237-7600

Notice: *The information contained in this document may be legally privileged and confidential information intended only for the use of the individual or entity named herein. If you have received this document in error, please reply to the sender via email or notify the Office of the Attorney General at [670-237-7500](tel:670-237-7500) immediately that you received the message in error and then delete it. Thank you.*



Notice of Deposition and for Production of Documents.pdf

328K

Exhibit E

Edward Manibusan (F0131)
Attorney General
J. Robert Glass, Jr. (F0523)
Chief Solicitor
Office of the Attorney General
Hon. Juan A. Sablan Mem. Bldg., 2nd Floor
Saipan, MP 96950-8907
Tel: (670) 237-7500
Fax: (670) 664-2349
Email: robby_glass@cnmioag.org

*Attorney for Creditor, The Commonwealth of the
Northern Mariana Islands*

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

In re

**CASE NO. 24-00002
Chapter 11**

**IMPERIAL PACIFIC INTERNATIONAL
(CNMI), LLC**

**Debtor and
Debtor-in-Possession**

**CREDITOR THE COMMONWEALTH
OF THE NORTHERN MARIANA
ISLANDS' NOTICE OF DEPOSITION
AND FOR PRODUCTION OF
DOCUMENTS PURSUANT TO
BANKRUPTCY RULES 7030 AND 7034**

PLEASE TAKE NOTICE that pursuant to Rules 30 and 34 of the Federal Rules of Civil Procedure, incorporated by Rules 7030 and 7034 of the Federal Rules of Bankruptcy the Commonwealth of the Northern Mariana Islands will take the deposition upon oral examination of Mr. Loi Lam Sit, the stalking horse bidder identified in the Debtor's Motion to Approve Bid Procedures for Sale of Substantially All of the Debtor's Assets and Related Relief (ECF No. 182), on September 13, 2024, commencing at 9:00 a.m. (ChST) via Zoom (or another web-based deposition option) through a web link to be provided. If the parties change their position and demand that the deposition occur in person, then after appropriate meet and confer the

1 deposition might occur at the Law Office of Bruce Berline, Security Title Building, Isa Drive,
2 Capitol Hill, Saipan, MP 96950. The deposition shall continue from day-to-day until
3 completed.

4 **PLEASE TAKE FURTHER NOTICE** that Defendant's deposition may be recorded by
5 stenographic means and/or be recorded digitally or electronically utilizing audio or video
6 technology (including by the "Record" function on Zoom), and/or by videotape. The
7 Commonwealth may also utilize software to generate the instant visual display of testimony. The
8 deposition will be conducted utilizing the "Share Screen" function on Zoom to view exhibits or
9 another similar paperless virtual display platform. The parties are advised that in lieu of a paper
10 set of exhibits, the exhibits may be provided and displayed digitally to the deposition officer,
11 deponent, parties and counsel. The exhibits will be compiled by the deposition officer for the
12 purposes of exhibit stamping and ultimate production of the final certified transcript.
13

14 **PLEASE ALSO TAKE NOTICE** that the Commonwealth requests Mr. Loi Lam Sit to
15 produce the following documents:
16

- 17 1) any documents to show he has experience in construction and management of a
18 hotel;
- 19 2) any documents evincing his ability to finish construction that is estimated to cost
20 \$150 million.

21 Such documents may be produced electronically and sent to the Office of the Attorney General
22 via email to robby_glass@cnmioag.org.
23
24
25

26 //

27 //

1 Dated September 10, 2024

2 OFFICE OF THE ATTORNEY GENERAL
3 EDWARD MANIBUSAN
4 ATTORNEY GENERAL

5 /s/ J. Robert Glass, Jr.
6 J. ROBERT GLASS, JR. (F0523)
7 Chief Solicitor

8 Attorney for Creditor the Commonwealth
9 Of the Northern Mariana Islands
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UNITED STATES BANKRUPTCY COURT

District of _____

In re **Imperial Pacific International (CNMI), LLC**

Debtor

(Complete if issued in an adversary proceeding)

Case No. **24-0002**

Chapter **11**

Plaintiff

v.

Adv. Proc. No. _____

Defendant

**SUBPOENA TO TESTIFY AT A DEPOSITION
IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)**

To: **Loi Lam Sit**

(Name of person to whom the subpoena is directed)

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this bankruptcy case (or adversary proceeding). If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

PLACE

Law Office of Bruce Berline, Security Title Building, Isa Drive, Saipan, MP

DATE AND TIME

September 13, 2024 9:00 AM

The deposition will be recorded by this method:

Zoom or similar recording

☒ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

1) any documents which show your ability to construct a hotel or run a hotel; 2) any documents showing that you are financially capable of completing a \$100-\$150 million hotel project

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: **09/10/2024**

CLERK OF COURT

OR

J. Robert Glass, Jr.

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party)
Commonwealth of the NMI, who issues or requests this subpoena, are:

Caller Box 10007, Saipan, MP 96950; robby_glass@cnmioag.org; 670-237-7500

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

(A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt. The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Exhibit F



Aaron Halegua <aaron.halegua@gmail.com>

Re: Notice and Subpoena for Deposition of Mr. Sit

Aaron Halegua <ah@aaronhalegua.com>

Tue, Sep 10, 2024 at 3:38 PM

To: "Joey P. San Nicolas" <jpsn@sannicolaslaw.net>

Cc: Robert Glass <robby_glass@cnmioag.org>, bruce berline <bberline@gmail.com>, Michael Dotts <mdotts@dottslaw.law>, "Ordubegian, Aram" <aram.ordubegian@afslaw.com>, "Verbrugge, Neil (USTP)" <Neil.Verbrugge@usdoj.gov>, Chuck Choi <cchoi@hibklaw.com>, "John-Patrick M. Fritz" <jpf@lnbyg.com>, Charles McDonald <charles@mcdonald.law>, Allison Ito <aito@hibklaw.com>, keith.chambers@chamberslawcnmi.com

Dear JP,

We are very familiar with the Court's prior rulings about the taking of depositions involving witnesses located in mainland China. However, as you stated, your client is located in Hong Kong. The treatment of Hong Kong under the Hague Convention differs from mainland China, and the PRC Civil Procedure Law referenced in the decisions you provided governs mainland China, not Hong Kong. Accordingly, numerous district courts in the Ninth Circuit and elsewhere explicitly permit a deposition of a witness in Hong Kong to take place, even while noting that a deposition may not be allowed in mainland China. Here are some of those decisions:

- *Zhizheng Wang v. Hull*, No. C18-1220RSL, 2020 WL 4734930, at *2 (W.D. Wash. June 22, 2020) ("defendant's motion to compel plaintiff to appear for deposition at a place where the parties can take his testimony without fear of reprisal by the People's Republic of China - such as Seattle, *Hong Kong*, Macau, Seoul, or Taipei - and using video conferencing software used commercially by court reporters is GRANTED.") (emphasis added).
- *Sec. & Exch. Comm'n v. Hong*, No. CV2004080MCSRAOX, 2021 WL 8531666, at *1 (C.D. Cal. May 18, 2021) ("If Defendants are unable to successfully obtain authorization for the depositions prior to the discovery cut-off, or any taking of testimony approved by the PRC limits Plaintiff's ability to question Defendants, Defendants will be required to sit for their depositions in Hong Kong or the United States pursuant to Rule 30.").
- *Shenzhen Synergy Digital Co. v. Mingtel, Inc.*, No. 4:19-CV-00216, 2021 WL 6072565, at *3 (E.D. Tex. Dec. 23, 2021) ("in further recognition that Macau and Hong Kong are distinct from mainland China, in-person and video depositions of Chinese nationalists have long been conducted from these places for use in the United States.").
- *Junjiang Ji v. Jling Inc.*, No. 15-CV-4194 (SIL), 2019 WL 1441130, at *13 (E.D.N.Y. Mar. 31, 2019) ("Indeed, mindful of the applicable Chinese laws, this Court denied Plaintiffs' request that Ji's deposition be conducted by videoconference from his residence in mainland China using a service such as Skype and specifically ordered the deposition to proceed in Hong Kong, where it would be lawful.").

Therefore, there should be no objection to a Zoom deposition of your client while he is in Hong Kong. Alternatively, your client is also welcome to fly to Saipan. There are currently direct flights from Hong Kong to Saipan on Hong Kong Airlines, including this Thursday (<https://www.booking.com/flight-DT1kwgSvon>).

Please confirm that your client will be available for a Zoom deposition on Friday at 9:00 a.m. (ChST), or let us know if he prefers some other date/time or to appear in person and we will do our best to accommodate that request. We would like this scheduling issue resolved today, otherwise we will need to raise it with the Court.

Sincerely,
Aaron Halegua

On Tue, Sep 10, 2024 at 6:33 AM Joey P. San Nicolas <jpsn@sannicolaslaw.net> wrote:

Hello Robbie, Aaron, et. al:

As a matter of professional courtesy I wanted to share the attached opinion by Chief Judge Manglona on the issue of acquiring testimony from witnesses in China, taken from Sardini v. IPI, 20-cv-00007, Document No. 106. I also attached a similar order from the CNMI Superior Court.

Do not hesitate to contact me if you wish to further confer.

Best regards,

JP

On Tue, Sep 10, 2024 at 6:28 PM Joey P. San Nicolas <jpsn@sannicolaslaw.net> wrote:

Thanks, Robbie. It was nice chatting with you today. As I informed Aaron I will provide a formal response by tomorrow. Crossing my fingers that the Tropical Storm passes us.

Best regards,

JP

On Tue, Sep 10, 2024 at 5:30 PM Robert Glass <robby_glass@cnmioag.org> wrote:

Mr. San Nicolas,

Please find attached the Commonwealth's Notice of Deposition and for Production of Documents for your client, Mr. Loi Lam Sit on September 13, 2024 by Zoom. As I am aware you have also received a notice of deposition from Mr. Halegua, we are also willing to coordinate with you on the time and place of the deposition. We are also willing to coordinate with you on the production of documents as well.

This notice was previously sent to Mr. Chuck Choi and the Debtor's attorneys in compliance with Fed. R. Civ. P. 45.

Sincerely,

On Tue, Sep 10, 2024 at 1:09 PM Aaron Halegua <ah@aaronhalegua.com> wrote:

Dear JP,

As we have not heard back from you regarding a date, we are sending you a notice and subpoena for the deposition of Mr. Sit on Friday, September 13, 2024. Please find these documents attached. We are willing to do the deposition by Zoom, unless you insist that it be in person, in which case we can host you at Bruce Berline's office in Saipan. Please let us know by the end of the day which arrangement you prefer so that we may make the appropriate preparations. I have been informed that by the close of business today, CNMI will also be issuing a subpoena for Mr. Sit's deposition on September 13. We are happy to coordinate these together to minimize any burden on Mr. Sit.

Sincerely,
Aaron Halegua

--

Aaron Halegua
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W: www.aaronhalegua.com



J. Robert Glass, Jr.

Chief Solicitor
Office of the Attorney General
Commonwealth of the Northern Mariana Islands
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--

Joey P. San Nicolas

Attorney at Law
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Saipan, MP 96950
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Joey P. San Nicolas

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W: www.aaronhalegua.com

Exhibit G



Madeleine Cavanagh <madeleineccavanagh@gmail.com>

Re: Notice and Subpoena for Deposition of Mr. Sit

1 message

Aaron Halegua <aaron.halegua@gmail.com>

Tue, Sep 10, 2024 at 10:00 PM

To: "Joey P. San Nicolas" <jpsn@sannicolaslaw.net>

Cc: Aaron Halegua <ah@aaronhalegua.com>, Robert Glass <robby_glass@cnmioag.org>, bruce berline <bberline@gmail.com>, Michael Dotts <mdotts@dottslaw.law>, "Ordubegian, Aram" <aram.ordubegian@afslaw.com>, "Verbrugge, Neil (USTP)" <Neil.Verbrugge@usdoj.gov>, Chuck Choi <cchoi@hibklaw.com>, "John-Patrick M. Fritz" <JPF@lnbyg.com>, Charles McDonald <charles@mcdonald.law>, Allison Ito <aito@hibklaw.com>, keith.chambers@chamberslawcnmi.com

Hi JP,

Do you have any authority for your position that a Chinese citizen in Hong Kong would need permission from the Chinese authorities to sit for a voluntary deposition? I have never heard that before, nor have we seen any case suggesting that. The practice for decades has literally been that Chinese citizens go to Hong Kong for depositions specifically because no such permission will be needed.

We asked you provide times on Friday, Saturday, Sunday or Monday that Mr. Sit is available. We have not received that. We are happy to start the deposition on Friday after your hearing, or you can suggest another time.

Our concern is that we are just being given excuses in order to avoid Mr Sit being deposed before the hearing on the bid procedure motion. If that is not your intention and you are operating in good faith, please provide some times that he is available.

Aaron

Sent from my iPhone, please excuse typos and brevity

On Sep 10, 2024, at 9:51 PM, Joey P. San Nicolas <jpsn@sannicolaslaw.net> wrote:

Hello Aaron:

Thank you for your email. Although I appreciate your authorities, I still believe Mr. Sit, who is a citizen of the People's Republic of China, must get permission from the Chinese authorities, pursuant to the Hague Conventions. Please also know that I have a hearing on Friday morning in Superior Court and am not available for the proposed date and time of the deposition.

As for travel to Saipan, three days is too short of notice to make those arrangements, given his hectic schedule. If you wish to bring this matter to the Court's attention, I ask that it be scheduled for no sooner than Monday of next week as I have District Court and Superior Court hearings and personal matters that I must attend to for the rest of the week.

As we have done before, I am open to a phone or Whatsapp call later this afternoon or at 8:00 am tomorrow ChST. Please advise. Thanks.

JP

On Wed, Sep 11, 2024 at 5:39AM Aaron Halegua <ah@aaronhalegua.com> wrote:

Dear JP,

We are very familiar with the Court's prior rulings about the taking of depositions involving witnesses located in mainland China. However, as you stated, your client is located in Hong Kong. The treatment of Hong Kong under the Hague Convention differs from mainland China, and the PRC Civil Procedure Law referenced in the decisions you provided governs mainland China, not Hong Kong. Accordingly, numerous district courts in the Ninth Circuit and elsewhere explicitly permit a deposition of a witness in Hong Kong to take place, even while noting that a deposition may not be allowed in mainland China. Here are some of those decisions:

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Best regards,

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Sincerely,
Aaron Halegua

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Joey P. San Nicolas

Attorney at Law
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Joey P. San Nicolas

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not the intended recipient or believe you received this communication in error, please contact the sender and delete the material from your computer.

Exhibit H



Aaron Halegua <aaron.halegua@gmail.com>

Re: Notice and Subpoena for Deposition of Mr. Sit

Joey P. San Nicolas <jpsn@sannicolaslaw.net>

Wed, Sep 11, 2024 at 8:36 PM

To: Aaron Halegua <ah@aaronhalegua.com>

Cc: Charles McDonald <charles@mcdonald.law>, Allison Ito <aito@hibklaw.com>, keith.chambers@chamberslawcnmi.com, Robert Glass <robby_glass@cnmioag.org>, bruce berline <bberline@gmail.com>, Michael Dotts <mdotts@dottslaw.law>, "Ordubegian, Aram" <aram.ordubegian@afslaw.com>, "Verbrugge, Neil (USTP)" <Neil.Verbrugge@usdoj.gov>, Chuck Choi <cchoi@hibklaw.com>, "John-Patrick M. Fritz" <jpf@lnbyg.com>

Dear Aaron:

Thank you for your email. I will get back to you later today.

JP

On Thu, Sep 12, 2024 at 7:02 AM Aaron Halegua <ah@aaronhalegua.com> wrote:

Hi JP,

Please let us know today if Mr. Sit will explicitly authorize you to accept service and we can work collaboratively on scheduling a time. Alternatively, we will move to compel the deposition based on the implied authorization you have been granted based on your actions in this case on behalf of Mr. Sit thus far. *See In re Focus Media Inc.*, 387 F.3d 1077, 1082 (9th Cir. 2004); *Luedke v. Delta Air Lines, Inc.*, 159 B.R. 385, 395 (S.D.N.Y. 1993); *Paddington Press, Ltd. v. Hill Samuel & Co. (In re Paddington press, Ltd.)*, 5 B.R. 343, 345 (Bankr. S.D.N.Y. 1980). And, if found that service was proper based on this implied authorization, request sanctions under Bankruptcy Rule 7037, which incorporates FRCP 37. Of course, our preference would obviously be to avoid the need to involve the Court in this matter. Thank you.

Sincerely,
Aaron Halegua

On Wed, Sep 11, 2024 at 1:09 AM Aaron Halegua <ah@aaronhalegua.com> wrote:

Dear JP,

My understanding was that the reason the Court insisted that Mr. Sit have local counsel was precisely to avoid this issue of it being difficult or impossible to serve him. If it is not to cause delay or be obstructionist, what legitimate reason is there for Mr. Sit to insist on personal service in this litigation in which he is obviously intimately involved? Please clarify that for us.

Aaron Halegua

On Tue, Sep 10, 2024 at 11:32 PM Joey P. San Nicolas <jpsn@sannicolaslaw.net> wrote:

Dear Aaron and Robbie:

Please know that Mr. Sit did not waive personal service of the subpoena and did not authorize me to accept the subpoena on his behalf. Thank you.

JP

On Tue, Sep 10, 2024 at 1:09 PM Aaron Halegua <ah@aaronhalegua.com> wrote:

Dear JP,

As we have not heard back from you regarding a date, we are sending you a notice and subpoena for the

deposition of Mr. Sit on Friday, September 13, 2024. Please find these documents attached. We are willing to do the deposition by Zoom, unless you insist that it be in person, in which case we can host you at Bruce Berline's office in Saipan. Please let us know by the end of the day which arrangement you prefer so that we may make the appropriate preparations. I have been informed that by the close of business today, CNMI will also be issuing a subpoena for Mr. Sit's deposition on September 13. We are happy to coordinate these together to minimize any burden on Mr. Sit.

Sincerely,
Aaron Halegua

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Joey P. San Nicolas

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Aaron Halegua
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Exhibit I



Aaron Halegua <aaron.halegua@gmail.com>

Re: Notice and Subpoena for Deposition of Mr. Sit

Aaron Halegua <ah@aaronhalegua.com>

Thu, Sep 12, 2024 at 11:31 AM

To: "Joey P. San Nicolas" <jpsn@sannicolaslaw.net>

Cc: Charles McDonald <charles@mcdonald.law>, Allison Ito <aito@hibklaw.com>,

keith.chambers@chamberslawcnmi.com, Robert Glass <robby_glass@cnmioag.org>, bruce berline

<bberline@gmail.com>, Michael Dotts <mdotts@dottslaw.law>, "Ordubegian, Aram" <aram.ordubegian@afslaw.com>,

"Verbrugge, Neil (USTP)" <Neil.Verbrugge@usdoj.gov>, Chuck Choi <cchoi@hibklaw.com>, "John-Patrick M. Fritz"

<JPF@lnbyg.com>

Dear JP,

During our meet and confer via WhatsApp earlier today, I stated that we would need to file a motion to compel or order to show cause tomorrow (Friday, September 13, Saipan time) if Mr. Sit would not agree to a date and time for a deposition, in person or via Zoom, prior to the hearing on the Debtor's motion to approve its bid procedure in which Mr. Sit is the stalking horse. We still have not heard back from you on this point. We intend to file our papers tomorrow (Friday, Saipan time). If Mr. Sit is agreeable to set a time so that we do not need to file, please let me know as soon as possible.

Aaron

On Thu, Sep 12, 2024 at 8:10 AM Aaron Halegua <aaron.halegua@gmail.com> wrote:

Hi JP, any update?

Sent from my iPhone, please excuse typos and brevity

On Sep 11, 2024, at 8:37 PM, Joey P. San Nicolas <jpsn@sannicolaslaw.net> wrote:

Dear Aaron:

Thank you for your email. I will get back to you later today.

JP

On Thu, Sep 12, 2024 at 7:02 AM Aaron Halegua <ah@aaronhalegua.com> wrote:

Hi JP,

Please let us know today if Mr. Sit will explicitly authorize you to accept service and we can work collaboratively on scheduling a time. Alternatively, we will move to compel the deposition based on the implied authorization you have been granted based on your actions in this case on behalf of Mr. Sit thus far. See *In re Focus Media Inc.*, 387 F.3d 1077, 1082 (9th Cir. 2004); *Luedke v. Delta Air Lines, Inc.*, 159 B.R. 385, 395 (S.D.N.Y. 1993); *Paddington Press, Ltd. v. Hill Samuel & Co. (In re Paddington press, Ltd.)*, 5 B.R. 343, 345 (Bankr. S.D.N.Y. 1980). And, if found that service was proper based on this implied authorization, request sanctions under Bankruptcy Rule 7037, which incorporates FRCP 37. Of course, our preference would obviously be to avoid the need to involve the Court in this matter. Thank you.

Sincerely,
Aaron Halegua

On Wed, Sep 11, 2024 at 1:09 AM Aaron Halegua <ah@aaronhalegua.com> wrote:

My understanding was that the reason the Court insisted that Mr. Sit have local counsel was precisely to avoid this issue of it being difficult or impossible to serve him. If it is not to cause delay or be obstructionist, what legitimate reason is there for Mr. Sit to insist on personal service in this litigation in which he is obviously intimately involved? Please clarify that for us.

Aaron Halegua

On Tue, Sep 10, 2024 at 11:32 PM Joey P. San Nicolas <jpsn@sannicolaslaw.net> wrote:

Dear Aaron and Robbie:

Please know that Mr. Sit did not waive personal service of the subpoena and did not authorize me to accept the subpoena on his behalf. Thank you.

JP

On Tue, Sep 10, 2024 at 1:09 PM Aaron Halegua <ah@aaronhalegua.com> wrote:

Dear JP,

As we have not heard back from you regarding a date, we are sending you a notice and subpoena for the deposition of Mr. Sit on Friday, September 13, 2024. Please find these documents attached. We are willing to do the deposition by Zoom, unless you insist that it be in person, in which case we can host you at Bruce Berline's office in Saipan. Please let us know by the end of the day which arrangement you prefer so that we may make the appropriate preparations. I have been informed that by the close of business today, CNMI will also be issuing a subpoena for Mr. Sit's deposition on September 13. We are happy to coordinate these together to minimize any burden on Mr. Sit.

Sincerely,
Aaron Halegua

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Attorneys for Joshua Gray

**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.

Case No. 1:24-bk-00002

**[PROPOSED]
ORDER TO SHOW CAUSE AGAINST
THIRD-PARTY WITNESS LOI LAM SIT**

Hearing Date: TBD
Hearing Time: TBD
Judge: Hon. Ramona V. Manglona

1 On September 16, 2024, Joshua Gray (“Gray”) and the Commonwealth of the Northern
2 Mariana Islands (the “CNMI” (together with Gray, the “Movants”)), both creditors of the Debtor in
3 the above-referenced proceeding, jointly filed a petition for an Order to Show Cause (the “Petition”)
4 requiring Mr. Sit to explain why he should not be held in contempt for failing to comply with their
5 properly served Fed. R. Civ. P. 45 subpoenas (the “Subpoenas”). (ECF No. ____). The petition is
6 supported by a memorandum of law (ECF No. ____), and by the Declaration of Aaron Halegua, dated
7 September 15, 2024, to which numerous exhibits are attached. (ECF No. ____).

8 The Movants have presented evidence that their Subpoenas contain the proper content and
9 were properly delivered to Mr. Sit by transmitting them via email to Mr. Sit’s local attorney for this
10 proceeding, Mr. Joey P. San Nicolas. The Subpoenas required Mr. Sit to appear for a deposition on
11 September 13, 2024 at 9:00 a.m. and to produce certain documents. *See Martinez v. City of Pittsburg*,
12 No. C 11-01017 SBA LB, 2012 WL 699462, *4 (N.D. Cal. Mar. 1, 2012) (finding that an order to
13 show cause was the appropriate response to failure to comply with Rule 45 subpoena); *In re*
14 *Procom America LLC*, 638 B.R. 634, 638 (M.D. Fl. 2022) (personal service not required for Rule 45
15 subpoena); *In re Focus Media Inc.*, 387 F.3d 1077, 1082 (9th Cir. 2004) (finding third-party’s lawyer
16 had implied authority to accept service where he repeatedly represented client in the bankruptcy case).

17 After receiving the Subpoenas, Mr. San Nicolas raised a number of objections, such as an
18 argument that permission from the People’s Republic of China was required, but failed to provide any
19 authority that this applied in Hong Kong. *See, e.g., Zhizheng Wang v. Hull*, No. C18-1220RSL, 2020
20 WL 4734930, *2 (W.D. Wash. June 22, 2020) (depositions permitted in Hong Kong). Mr. San Nicolas
21 also objected that he was not personally available on the morning of September 13, 2024, but did not
22 provide a date upon which he and Mr. Sit were available for a deposition or agree to produce the
23 documents. Later on, Mr. San Nicolas sent an email stating that Mr. Sit had not waived personal
service of the subpoena and did not authorize Mr. San Nicolas to accept it on his behalf. Gray stated

1 that it was his understanding that the Court had required Mr. Sit to obtain local counsel to ensure that
2 he could be served, and informed Mr. San Nicolas that service was proper because Mr. San Nicolas
3 had apparent authority to accept service, citing numerous legal authorities, but Mr. San Nicolas did
4 not respond. On September 12, 2024, counsel for Gray and Sit had a meet and confer via WhatsApp
5 about the subpoena, in which Mr. San Nicolas stated that he would try to provide a date and time that
6 Mr. Sit would be available for a deposition prior to the September 19, 2024 hearing on the Bid
7 Procedures Motion. However, as of the scheduled time for the deposition, no response from Mr. Sit
8 had been received. Mr. Sit also did not produce any documents or appear for a deposition on
9 September 13, 2024.

10 WHEREFORE, **Loi Lam Sit is ordered to show cause in writing**, no later than September
11 17, 2024 at 12:00 p.m. (ChST), why this Court should not enter an Order:

- 12 1. Finding Mr. Sit in civil contempt under Fed. R. Civ. P. 45(g) for failure to comply with the
13 Subpoenas;
- 14 2. Ordering Mr. Sit to appear for a deposition in accordance with the Subpoenas;
- 15 3. Ordering Mr. Sit to produce all documents requested by the Subpoenas within twenty-four
16 (24) hours;
- 17 4. Ordering Mr. Sit to pay a fine of \$2,000 per day until he fully complies with the Subpoenas;
- 18 5. Ordering that Mr. Sit pay Movants' attorneys' fees and costs caused by his disobedience
19 and associated with this Order to Show Cause; and
- 20 6. Ordering any other relief that the Court deems proper.

21 The Movants are ordered to serve a copy of this Order and all papers related to their Petition
22 on Mr. Sit either through via email to Mr. San Nicolas as well as calling Mr. San Nicolas' personal
23 and office phone numbers to notify him about the Order. The Movants shall file a proof of service
with the Court.

1 The Movants may file a reply to Mr. Sit's submission by Wednesday, September 18, 2024 at
2 12:00 p.m. (ChST) that shall not exceed five (5) pages. A hearing is set for Thursday, September 19,
3 2024 at 9:00 a.m.

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5 IT IS SO ORDERED THIS ___ DAY OF September, 2024.

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8 RAMONA V. MANGLONA
Chief Judge
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