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**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. 24-00002
(Chapter 11)

Hearing (on First Day Motions):

Date: TBD

Time: TBD (ChST)

Chief Judge: Hon. Ramona V.
Manglona

[Related Docket Entries: Dkts. #9, 10,
11, 12, and 13]

**UNITED STATES TRUSTEE’S STATEMENT REGARDING
DEBTOR’S FIRST DAY MOTIONS**

The United States Trustee, by and through her attorney, hereby submits this



1 statement regarding the Debtor’s motions filed on April 23, 2024 (the “First Day
2 Motions”). The United States Trustee has authority and standing to make this
3 statement since its responsibilities include, among other things, supervising “the
4 administration of cases ... under Chapter 11” of the Bankruptcy Code. 28 U.S.C.
5 § 586(a)(3).
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8 **I. DKT. #9: MOTION FOR ORDER ESTABLISHING INTERIM FEE
APPLICATION AND EXPENSE REIMBURSEMENT PROCEDURES**

9 Typically, an exception from the ordinary fee procedures contemplated by
10 the Bankruptcy Code is only warranted in larger cases. *See In re Knudsen Corp.*,
11 84 B.R. 668, 672 n. 6 (9th Cir. BAP 1988) (ruling interim fee procedures allowable
12 in rare cases involving an unusually large case with exceptionally large fees
13 accruing every month, and noting the debtor was incurring over \$250,000 in
14 professional fees per month). Although this case appears to be a substantial case,
15 Debtor has yet to file schedules and statements, and the scope of the work required
16 is not yet clear. Because a fee procedure seeking payment of monthly amounts
17 prior to court approval should itself be the subject of a noticed hearing prior to any
18 payments, this motion does not need to be heard on the “first day”. *See In re*
19 *Knudsen Corp.*, 84 B.R. 668, 673 (9th Cir. BAP 1988). Any order on Interim Fee
20 Procedures should be approved only on an *interim* basis to allow further feedback
21 and input from any Committee (if appointed) or to any committee members.
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1 In order to preserve the rights of the Court and parties to object to Interim
2 Fee Applications (which fee applications are different from the monthly interim fee
3 statements), the United States Trustee requests the following language be added to
4 the proposed interim fee procedures in paragraph 15 of the Motion (insert after
5 15.d):

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8 15.e. The failure of any Notice Party to object to an
9 Interim Fee Statement does not, and shall not, waive the
10 right of such Notice Party to file and serve an objection
11 to an Interim Fee Application. Nor shall the failure of
12 any Notice Party to object to an Interim Fee Statement
13 bind any Notice Party for purposes of such Notice Party's
14 objection, if any, to an Interim Fee Application. All fees
15 and expenses paid to Professionals are subject to
16 disgorgement until final allowance by the Court.

17 For purposes of clarity and to conform the proposed procedures with the
18 Motion and Section 331, the United States Trustee requests that the first sentence
19 in paragraph 15.d of the proposed procedures, relating to the timing of the filing of
20 interim fee applications, be modified as follows:

21 15.d. To be eligible to receive payments under this
22 interim compensation procedure, Professionals must file
23 Interim Fee applications with the Court, and serve on the
24 Notice Parties, as follows: (i) not more than once in the
25 initial 120 days after entry of the order for relief, and (ii)
26 thereafter, in four to six month intervals, or at such other
27 intervals convenient to the Court. ~~less than once every~~
28 ~~120 days from the date of retention.~~

1 With the modifications to language in the proposed interim fee procedures
 2 requested above, and such modifications reflected in any proposed order, the
 3 United States Trustee has no objection to the Motion on an *interim* basis.¹
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5 **II. DKT. #10: APPLICATION TO EMPLOY CHOI & ITO,**
 6 **ATTORNEYS AT LAW AND MCDONALD LAW OFFICE AS CO-**
 7 **COUNSEL FOR THE DEBTORS**

8 The United States Trustee does not oppose *interim* authorization of
 9 employment for Choi & Ito, Attorneys at Law and McDonald Law Office as Co-
 10 Counsel as general bankruptcy co-counsel for the Debtors. Under FRBP Rule
 11 6003, final authorization must wait until 21 days after the petition is filed. The
 12 United States Trustee reserves the right to examine any future fee applications for,
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 16 ¹ With respect to fee compensation, the United States Trustee intends to discuss
 17 with Professionals guidelines regarding billing for travel time in the event it
 18 becomes necessary for Professionals from Hawaii and the U.S. Mainland to travel
 19 to Saipan. In particular, in the bankruptcy case of *In re Archbishop of Agana, In*
 20 *the District Court of Guam, Territory of Guam, Bankruptcy Division, Bk. No. 19-*
 21 *00010*, the Guam Bankruptcy Court entered an order, Dkt. #84-1, limiting fee
 22 compensation for non-working travel as follows:

23 3 4. Non-working travel time shall be billed at 50% of the Professionals' hourly
 24 4 rate, with a cap of 6 hours for any one-way trip to or from Guam (by way of example, 6
 25 5 hours shall be 12 hours of travel time at 50% of the Professionals' hourly rate). Working
 26 6 travel time is billable at 100% of the Professionals' agreed upon hourly rate (by way of
 27 7 example, if a Professional took 16 hours to travel to Guam and conducted 2 hours of work
 28 8 on the case during the trip, the Professional would be able to bill for the 2 hours of actual
 9 work, plus 6 more hours of non-working travel time (50% of 14 hours of non-working
 10 travel equals 7 hours, but capped to 6 hours) for a total of 8 hours billed during the trip).
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1 inter alia, any unnecessary duplication of effort before any compensation is
2 awarded by the Court.

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4 **III. DKT. #11: MOTION FOR ORDER AUTHORIZING DEBTOR TO**
5 **PAY PRE-PETITION WAGES AND OTHER EMPLOYMENT-**
6 **RELATED COSTS AND EXPENSES**

7 Debtor's Motion seeks to: (1) pay pre-petition wages, salaries, gratuities,
8 payroll taxes and payroll deductions and required contributions, and (2) honor any
9 outstanding checks for pre-petition employment expenses. The United States
10 Trustee does not object to this Motion provided language in any order approving
11 this Motion expressly states no amounts paid or honored shall exceed the priority
12 cap.
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14 A. **SECTION 507(a)(4): PREPETITION WAGES**

15 The United States Trustee does not object to the payment of prepetition
16 wages, and honoring accrued vacation and sick leave in the regular course of
17 business, to the extent such payments do not exceed the Section 507(a)(4) priority
18 cap of \$15,150, *per employee*, and were earned within 180 days before the date of
19 the filing of the petition. Any amounts in excess of the priority cap are unsecured
20 claims for which the employee should submit a proof of claim. Because the
21 Debtor's Motion Exhibit "A" indicates that the wages to be paid *per employee* are
22 substantially less than the priority cap, the United States Trustee does not object to
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1 the relief of authorizing payment of accrued but unpaid wages provided such
2 payments do not exceed the priority cap.

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4 Also, based on Debtor's Motion Exhibit "A", and its representation that
5 honoring any payroll check that may be outstanding from the pre-petition period
6 "must be small" in amount, the United States Trustee does not object to the relief
7 of honoring checks for payroll checks provided such payments do not exceed the
8 priority cap. The United States Trustee does not oppose the request to make
9 deductions from employee payroll for federal tax withholding.
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12 B. PAID TIME OFF

13 Debtor *does not* seek authority to honor "paid time off" ("PTO"). For the
14 record, although the United States Trustee would not object to Debtor's honoring
15 accrued vacation and sick leave in the regular course of business, the United States
16 Trustee does object to any "cash-out" of the PTO payments because the PTO was
17 not earned within 180 days before the date of the filing of the petition.²
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20 **IV. DKT. #12: MOTION FOR ORDER AUTHORIZING DEBTOR TO
OBTAIN POSTPETITION SECURED INDEBTEDNESS**

21 In general, at this early juncture in the case, in order to avoid prejudicing the
22 rights of any future Official Committee and other parties in interest in this case,
23 certain of the provisions should be deleted or subject to further scrutiny. These
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² Insider How-Yo Chi has the largest PTO claim for accrued time off in the
27 amount of \$13,645.24.

1 matters should, at a minimum, be preserved for a final order after review by any
2 future Official Committee and other parties in interest. Although an Official
3 Committee has not yet been appointed, the United States Trustee is currently in the
4 process of soliciting membership for the formation of a committee of unsecured
5 creditors. Any interim order should not prejudice any committee of unsecured
6 creditors that may be formed.
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9 A. APPLICABLE LAW GOVERNING DIP FINANCING

10 Bankruptcy Code Section 364 provides in pertinent part:

11 (a) If the trustee is authorized to operate the business of the debtor
12 under section 721, 1108, 1203, 1204, or 1304 of this title, unless the
13 court orders otherwise, the trustee may obtain unsecured credit and
14 incur unsecured debt in the ordinary course of business allowable
15 under section 503(b)(1) of this title as an administrative expense.

16 (b) The court, after notice and a hearing, may authorize the trustee to
17 obtain unsecured credit or to incur unsecured debt other than under
18 subsection (a) of this section, allowable under section 503(b)(1) of
19 this title as an administrative expense.

20 (c) If the trustee is unable to obtain unsecured credit allowable under
21 section 503(b)(1) of this title as an administrative expense, the court,
22 after notice and a hearing, may authorize the obtaining of credit or the
23 incurring of debt—

24 (1) with priority over any or all administrative expenses of the
25 kind specified in section 503(b) or 507(b) of this title;

26 (2) secured by a lien on property of the estate that is not
27 otherwise subject to a lien; or

28 (3) secured by a junior lien on property of the estate that is
subject to a lien.

1 Federal Rule of Bankruptcy Procedure Rule 4001(c)(2) provides:

2 (2) Hearing

3 The court may commence a final hearing on a motion for authority to
4 obtain credit no earlier than 14 days after service of the motion. If the
5 motion so requests, the court may conduct a hearing before such 14-
6 day period expires, but the court may authorize the obtaining of credit
7 only to the extent necessary to avoid immediate and irreparable harm
8 to the estate pending a final hearing.

9 Under the standards for obtaining credit under Section 364, the Debtor must
10 show, among other things, that the terms of the transaction are fair, reasonable, and
11 adequate, given the circumstances of the estate-borrower and the proposed lender.

12 *See Bland v. Farmworker Creditors*, 308 B.R. 109, 113 (S.D. Ga. 2003); *In re*
13 *Crouse Group, Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Penn. 1987). Before granting
14 any motion under Section 364, the Court must make a qualitative assessment of the
15 credit transaction. *See In re Aqua Assocs.*, 123 B.R. 192, 196 (Bankr. E.D, Penn.
16 1991). Credit should not be approved when it is sought for the primary benefit of
17 a party other than the debtor or when funds are readily available from insiders or
18 others without providing the lender with the benefits of any priority. *See In re*
19 *Aqua Assocs.*, 123 B.R. at 196; *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 37
20 (Bankr. S.D.N.Y. 1990) (stating a proposed financing will not be approved where
21 it is apparent that the purpose of the financing is to benefit a creditor rather than
22 the estate).
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26 B. DEBTOR'S MOTION FOR DIP FINANCING AND TERM SHEET

1 In Summary, Debtor's Motion seeks authority to incur secured debtor-in-
2 possession financing ("DIP Financing") from lender Loi Lam SIT ("DIP Lender")
3 through a post-petition loan up to \$7,000,000. Up to \$400,000 is available upon
4 the entry of an interim order approving the DIP Facility. Upon a final order
5 approving the DIP Financing, the Lender may loan up to a maximum amount
6 \$7,000,000. The DIP Lender seeks a junior lien on the Debtor's leases. Debtor
7 states the purpose of the DIP Financing is for general operating expenses and to
8 pay its licensing fee to the Commonwealth Casino Commission.
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11 C. UNITED STATES TRUSTEE'S COMMENTS ON DEBTOR'S DIP
12 FINANCING MOTION

13 The United States Trustee has the following more detailed comments
14 regarding the Debtor's Motion for DIP Financing:
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- 16 1. Interim Relief must be supported by a showing of a need to
17 avoid immediate and irreparable harm.

18 Absent post-petition financing, given the lack of current revenue, this case
19 appears to be administratively insolvent. Due to the lack of schedules and
20 statements at this juncture in the case, it is unclear whether there are unencumbered
21 assets. If there are any unencumbered assets, it is unclear how much value/equity
22 exists in any such assets. The Budget shows that of the initial \$400,000, for the
23 month of May 2024, roughly \$207,000 will be used to pay rent, \$30,000 for
24 payroll, and \$100,000 is budgeted for Chapter 11 Professionals. Although there
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1 appears to be a basis to grant interim approval of up to \$400,000 in DIP Financing,
2 no additional amounts should be granted until final hearing on the motion.

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4 2. DIP Lender: Additional Information about DIP Lender's
5 relationship (if any) to Debtor should be provided.

6 The United States Trustee submits that, under the circumstances, some of the
7 DIP Facility terms may be overgenerous. It is not clear if the DIP Financing is an
8 arms-length transaction between the Debtor and an unrelated Third Party. If the
9 Debtor has little negotiating power due to an “insider” relationship with the DIP
10 Lender, then only the Court’s vigilance can prevent unreasonable terms which
11 would disadvantage other creditors. The law has long acknowledged the unequal
12 bargaining power inherent in negotiations leading to proposed postpetition
13 financing, as well as the very significant harm that can befall creditors if the
14 proposed financier is enabled to exploit its leverage position. *See, e.g., In re FCX,*
15 *Inc.*, 54 B.R. 833, 838 (Bankr. E.D.N.C. 1985) (stating the court should not ignore
16 the basic injustice of an agreement in which the debtor, acting out of desperation,
17 has compromised the rights of unsecured creditors). Postpetition financing should
18 be approved only if “the financing agreement does not contain terms that leverage
19 the bankruptcy process and powers or its purpose is not so much to benefit the
20 estate as it is to benefit a party-in-interest
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1 The DIP Lender is identified as Loi Lam SIT (Hong Kong Passport).
2 Debtor's Petition was signed by Howyo *Chi*. Debtor's First Day Declaration was
3 signed by Howyo *Cho*, the Manager of Imperial Pacific International (CNMIC)
4 LLC ("Debtor). According to Mr. Cho's First Day Declaration, Debtor's sole
5 member is Best Sunshine International Ltd. ("Best Sunshine"), a British Virgin
6 Islands corporation. Who is the person in control of Best Sunshine? In turn, Best
7 Sunshine is owned by Imperial Pacific International Holding Ltd. ("Holdings"),
8 which was incorporated under the laws of Hong Kong, China. Who is the person
9 in control of Holdings? Mr. Cho's Declaration did not attach any corporate chart
10 listing the ownership interest of Debtor's owners. Mr. Cho's First Day
11 Declaration merely states "To the best of my knowledge, Mr. Sit is not an owner or
12 creditor of the Debtor." It is not clear what Mr. Sit's relationship is to Debtor's
13 Manager Mr. Cho, and to the officers, directors, owners, and persons in control of
14 Best Sunshine or Holdings. More transparency should be provided. Bankruptcy
15 Code Section 101(31B) defines the term "insider" of a corporation to include a
16 director, officer, or person in control of the Debtor, a general partner of the debtor,
17 and a relative of a general partner, director, officer, or person in control of the
18 debtor. Section 101(41) defines "person" to include individual, partnership, and
19 corporation. Debtor should provide more disclosure and information about Mr.
20 Sit's relationship to Debtor, its sole member Best Sunshine, Best Sunshine's owner
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1 Holdings, and the officers, directors, owners, and person(s) in control of Debtor,
 2 Best Sunshine, and Holdings. This information is relevant to the level of scrutiny
 3 the proposed DIP Financing is subject to. *See In re MSR Hotels & Resorts, Inc.*,
 4 2013 WL 5716897, at *1 (Bankr. S.D.N.Y. 2013) (stating courts have generally
 5 applied a heightened standard of scrutiny when the transaction in question is with
 6 an insider of the debtor).
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9 3. Debtor has not specifically identified the Leases to which the
 10 Junior Lien and Superpriority Claim attached to.

11 Paragraph 8(g) of the summary of the DIP Facility Term Sheet does not
 12 identify the Leases that will be encumbered by the DIP Financing.
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14 **Priority and**
 15 **Collateral:**

The DIP Credit Facility shall be (a) secured by a junior mortgage on
 [describe leases] pursuant to 11 U.S.C. § 364(c)(3); and (b)
 “superpriority” status pursuant to 11 U.S.C. § 364(c)(1), provided,
 however, that Lender’s priority shall be subject to the Carve Out.

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 17 If the DIP Lender has a relationship with the Debtor, then it is not clear why a
 18 junior lien is required. Particularly if the DIP Lender would still make the loan
 19 with an administrative expense claim for post-petition advances. Although the
 20 granting of an administrative expense claim (to share ratably with all other
 21 administrative expense claims) for post-petition advances may not be
 22 objectionable, allowing the DIP Lender a superpriority claim (to be paid ahead of
 23 all other post-petition administrative expenses, including taxes, post-petition rent,
 24 etc.) appears inappropriate. In any event, the assets to be encumbered should be
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1 identified. No lien or superpriority claim should be granted on avoidance actions.
2 No final relief should be granted because the Debtor has yet to file its schedules or
3 statements which would provide information on the remaining lease term, value,
4 and senior encumbrances (if any) on the leases.
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6 4. Lender's loan fees are vague

7 Paragraph 8(h) does not state the amount of the Lender's "reasonable fees
8 and expenses" or how such amounts will be calculated.
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10 **Fees and Expenses:** Upon closing of the DIP Credit Facility, Borrower will pay Lender's
11 reasonable fees and expenses.

12 While certain fees might appropriately be paid to an independent lender in order to
13 induce the loan, such fees appear unnecessary if an insider is funding the loan in
14 large part to protect its existing investment. Likewise, requiring the Debtor to pay
15 for the legal fees and expenses of parties sitting at both sides of the table if those
16 parties are related to each other, would appear unfair since it comes at the expense
17 of other creditors. Also, the United States Trustee should be given the right to
18 review Lender's professionals' timesheets for reasonableness.
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22 5. DIP Facility "Carve Out" should be modified to not impair U.S.
23 Trustee fees and to provide for Chapter 7 Trustee fees if this
24 case is converted.

25 The DIP Facility proposes a carve-out from the junior lien and superpriority
26 claim of not less than \$500,000 to pay professional fees, U.S. Trustee quarterly
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1 fees. Although reference is made to a lease, the Motion does not describe any
 2 lease with specificity. Because it is not clear what property of the estate will
 3 secure the DIP Facility, it is also not clear the scope of the carve out. Also, the
 4 DIP Facility carve-out limits Committee professionals to \$150,000.
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6 **Use of Proceeds and**
 7 **Carve Out:**

The DIP Credit Facility shall be used to pay post-petition
 administrative expenses of the Chapter 11 Case, including, but not
 limited to, payment for maintenance and preservation of the property
 of the Debtor's estate, rent, insurance, utility services, operating
 expenses and court-approved professional fees and as such pre-
 petition expenses as may be approved by the Bankruptcy Court,
 provided, however, that not less than \$500,000 shall be "carved out"
 and set aside for (a) fees and expenses of professionals employed at
 the expense of the estate (including attorneys, accountants and
 appraisers); and (b) U.S. Trustee quarterly fees ("Carve Out") as may
 be approved by the Bankruptcy Court, and as set forth in the budget
 approved by the Lender, provided, however that the Carve Out for any
 Committee professionals shall be limited to \$150,000.
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 15 First, the U.S. Trustee requests the DIP facility junior secured lien and
 16 superpriority claim should be subject to a "full" carve-out for all U.S. Trustee
 17 quarterly fees, not to be pooled in with the professional fee carve-out. U.S.
 18 Trustee quarterly fees should not be subordinated to the DIP Lender when such
 19 fees are part of the "user" fee for the Debtor to be in reorganization.
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21 Second, the DIP facility junior secured lien and superpriority claim should
 22 be subject to a carve-out in the event this case is converted to a case under chapter
 23 7. Liens shall be subject to and subordinate to the fees and expenses of a Chapter
 24 7 Trustee, if one is appointed, but not including the expenses of the Chapter 7
 25 Trustee's professionals. The United States Trustee requests any Order contain the
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1 following language: “Any lien or superpriority administrative expense claim
2 created or recognized by this Order shall be subordinate to the trustee’s fees and
3 expenses in the event this case is converted to a proceeding under Chapter 7 of the
4 Bankruptcy Code.”

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6 Third, the DIP carve-out seeks to prematurely limit the amount of fees paid
7 to the Committee to \$150,000. The United States Trustee is currently in the
8 process of soliciting interest in forming a Committee. If a Committee is formed,
9 the Committee should have the opportunity to be heard on this proposed fee limit.
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12 6. Interim Order should be narrow and limited.

13 The United States Trustee requests that the Debtor’s Motion for DIP
14 Financing be subject to further review, and that the United States Trustee’s
15 comments raised above be addressed prior to the entry of any interim order. Any
16 Interim Order should only be granted to the extent necessary to avoid irreparable
17 harm. Any Interim Order should specifically state the order takes priority over the
18 term sheet to avoid any confusion. If interim relief is granted, the United States
19 Trustee requests the following language: “The Motion is granted only to the
20 extent provided herein. To the extent the Term Sheet or Credit Agreement is
21 inconsistent with the terms of this Order, this Order shall govern.”
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25 **V. DKT. #13: APPLICATION TO EMPLOY MICHAEL CHEN LAW**
26 **OFFICES AS SPECIAL LITIGATION COUNSEL FOR THE**
27 **DEBTOR**

1 The United States Trustee is concerned the scope of employment is too
 2 vaguely defined and requests clarification of the role of Proposed Special
 3 Litigation Counsel to avoid any future confusion. The Court should carefully and
 4 narrowly define the scope of services to be rendered by Proposed Special Counsel.
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6 Proposed Special Litigation Counsel’s scope of employment is described as:
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8 Briefly state need for 9 employment and 10 describe services to 11 be rendered:	The Debtor special litigation counsel to assist the Debtor in litigation matters that may arise in this case. In the year preceding the Petition Date, the Firm represented the Debtor in proceedings before the Commonwealth Casino Commission ("CCC") and in at least three lawsuits in the U.S. District Court for the District of the Northern Mariana Islands. It is critical that the Firm be allowed to continue those matters as they are necessary to a successful reorganization. <input checked="" type="checkbox"/> If checked, employment is for specified special purpose under 11 U.S.C. § 327(e).
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12 The first sentence of the “services to be rendered” states the services to be rendered
 13 by Proposed Special Litigation Counsel will be “to assist the Debtor in litigation
 14 matters that may arise in this case.” This statement is too broad. Using special
 15 counsel to provide general bankruptcy legal services is not allowed. *See In re*
 16 *Roper and Twardowsky, LLC*, 566 B.R. 734, 751 (Bankr. D.N.J. 2017) (observing
 17 courts have refused to allow employment of special counsel to render services that
 18 would overlap with those customarily reserved for general bankruptcy counsel).
 19 Debtor’s special litigation counsel should not be providing general bankruptcy
 20 litigation services relating to plan confirmation or other general bankruptcy
 21 matters. In order to avoid any confusion about the authorized scope of
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1 employment of the proposed special litigation counsel, the Court should not
2 approve any broad definition of the scope of services to be rendered.

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4 The last sentence of the “services to be rendered” by Proposed Special
5 Counsel states “[i]t is critical that the Firm be allowed to continue those matters as
6 they are necessary to a successful reorganization.” Presumably, this last sentence
7 refers to: (1) revocation proceeding before the Commonwealth Casino
8 Commission, (2) federal lawsuits against the CNMI government and CCC
9 Commissioners, (3) defending IPI in federal lawsuits against a number of creditors,
10 and (d) advising IPI on potential litigation and arbitration matters. Instead of
11 general descriptions for these matters, Applicant should provide specific detailed
12 information identifying the specific civil case (or administrative) number and court
13 (or forum) for each lawsuit Proposed Special Counsel will be employed. Given
14 this bankruptcy case, it is not clear why Proposed Special Counsel would need to
15 render any services to defend IPI in federal lawsuits against creditors.
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19 Furthermore, the “catch-all” whereby Proposed Special Litigation Counsel seeks to
20 generally advise IPI on potential litigation and arbitration matters is too broad and
21 vague and could encompass prohibited general bankruptcy legal services or future
22 unknown litigation matters. The Court should not enter an order granting
23 employment for unknown prospective litigation which would deprive the Court
24 and parties from the ability to examine separate applications for employment, and
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1 disclosures, for each future litigation matter to determine if conflicts or other
2 adverse interests exist.

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4 Although the United States Trustee does not oppose *interim* authorization of
5 employment for Michael Chen Law Offices as Special Litigation Counsel for
6 Debtor for specific, defined litigation matters, the Court should not grant open-
7 ended employment for undefined, or future unknown litigation matters. In the
8 event the Debtor needs additional special litigation services in the future, Debtor
9 should file a separate application to employ carefully defining the matter for which
10 services are to be rendered. Under FRBP Rule 6003, final authorization must wait
11 until 21 days after the petition is filed.
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14 The United States Trustee reserves its right to examine any future fee
15 applications by Special Litigation Counsel to ensure any services provided outside
16 of the scope of employment is reviewed before any compensation is awarded by
17 the Court, and the Court should not award compensation to special counsel acting
18 outside of the scope of its employment. *See In re Monument Auto Detail, Inc.*,
19 226 B.R. 219, 225 (BAP 9th Cir. 1998) (affirming denial of law firm's fee
20 application and stating law firm's failure to obtain court authorization for its
21 employment was fatal its ability to obtain payment for its chapter 11 services); *In*
22 *re Nestor*, 628 B.R. 707, 716 (Bankr. S.D. Fla. 2019) (disallowing special counsel
23 fees for services not within scope of work in employment application authorized
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1 by court); *In re Computer Learning Centers, Inc.*, 272 B.R. 897, 912-913 (Bankr.
2 E.D. Va. 2001) (denying special counsel for education regulatory matters fee
3 application to extent it sought fees for insurance work not related to scope of firm's
4 employment).
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6 **VI. CONCLUSION**

7 For the forgoing reasons, the United States Trustee requests that Debtor's
8 First Day Motions be subject to review to ensure the issues raised above are
9 addressed prior to the entry of any interim orders granting such First Day Motions.
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11 DATE: Honolulu, Hawaii, April 23, 2024.

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13 Tiffany L. Carroll
14 Acting United States Trustee

15 By /s/ Neil Verbrugge
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