

1 Bruce Berline  
2 LAW OFFICE OF BRUCE BERLINE, LLC  
3 Security Title Building  
4 Isa Drive, Capitol Hill  
5 PO Box 5682 CHRB  
6 Saipan, MP 96950  
7 Tel.: (670) 233-3663  
8 Fax: (670) 233-5262  
9 Email: bberline@gmail.com

6 Aaron Halegua  
7 AARON HALEGUA, PLLC  
8 524 Broadway, 11th Floor  
9 New York, New York 10012  
10 Tel.: (646) 854-9061  
11 Email: ah@aaronhalegua.com

10 Attorneys for Joshua Gray

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

14 In re

15 IMPERIAL PACIFIC INTERNATIONAL  
16 (CNMI), LLC,

17 Debtor and  
18 Debtor-in-Possession.

Case No. 1:24-bk-00002

**OPPOSITION BY JOSHUA GRAY TO  
DEBTOR IPI'S MOTION FOR INTERIM  
APPROVAL OF DIP FINANCING**

Hearing Date: May 30, 2024  
Hearing Time: 8:30 a.m.  
Judge: Hon. Ramona V. Manglona

21  
22 On April 19, 2024, Imperial Pacific International (CNMI), LLC (the "Debtor" or "IPI") filed  
23 a Chapter 11 voluntary petition for bankruptcy (the "Petition"). The Debtor then immediately filed a  
24 series of First-Day Motions, including a request for the Court to approve a DIP financing arrangement.  
(ECF No. 12 (the "Motion")). Judgment Creditor Joshua Gray ("Gray") objected to the proposal on



1 several grounds. (ECF No. 30). At a hearing on April 26, 2024, the Court continued the hearing on the  
2 Motion and instructed IPI to supplement or modify its submission. (ECF No. 32).

3 On May 10, 2024, the Debtor supplemented the Motion by submitting an introductory brief by  
4 the Debtor (ECF No. 47), an updated loan term sheet (ECF No. 47-1), and an updated loan contract  
5 (ECF No. 47-2 (the “Loan”). The primary difference from the original Motion is that, instead of the  
6 debt owed to the lender Loi Lam SIT (the “Lender”) receiving superpriority, it will instead be treated  
7 as an administrative expense of the estate pursuant to 11 U.S.C. § 364(b). Gray opposes granting the  
8 Motion in its current form. In doing so, Gray renews all objections made in his initial opposition as  
9 well as joins in the objections and oppositions filed by the U.S. Trustee (ECF No. 53), the CNMI (ECF  
10 No. 84), and the Official Committee of Unsecured Creditors (the “Committee”).<sup>1</sup> Accordingly, this  
11 opposition brief emphasizes those points not previously raised by the other objectors or where Gray  
12 seeks to supplement those arguments.

13  
14 1. The Debtor has provided insufficient information about the Lender. As the other oppositions  
15 point out, the identity and motivations of the Lender remain a mystery. More poignantly, the Debtor  
16 has provided no actual evidence that the Lender is not an insider. The updated submission submits *no*  
17 sworn statement. Instead, the Debtor’s submission, which is signed by Chuck McDonald, contains  
18 only a single, wholly-conclusory sentence: “The Lender is not an ‘insider’ of the Debtor, and has no  
19 ownership interest in the Debtor, Best Sunshine International Ltd. (the sole member of the Debtor), or  
20 Imperial Pacific International Holdings Ltd. (the owner of Best Sunshine International, Ltd.)” (ECF  
21 No. 47). Yet, there is no statement as to how this determination was made. What personal knowledge  
22 does Chuck McDonald have? What investigation did he conduct? He only represents the Debtor, not  
23  
24

---

<sup>1</sup> The Committee’s opposition has not yet been filed on ECF, but was served on the parties by email.

1 Best Sunshine or Imperial Pacific International Holdings—so how can he opine on the Lender’s  
2 relationship to those entities? Furthermore, there is not even a declaration from the Lender, let alone  
3 an offer to appear for questioning by the creditors and the Court.

4 2. The Debtor has not demonstrated the Loan terms are “fair and reasonable.” The Bankruptcy  
5 Code is designed to protect against DIP financing being used to give insiders a priority in the debtor’s  
6 assets. Accordingly, it is the debtor’s burden to show that the loan terms are “fair and reasonable,” and  
7 the Court must then make an independent determination on this issue. *In re Lahijani*, 325 B.R. 282,  
8 287–89 (B.A.P. 9th Cir. 2005). In addition, the “level of scrutiny is heightened” both (i) where the  
9 debtor itself (rather than an independent trustee) is negotiating the financing deal, and (ii) where the  
10 lender is an insider. *In re Shachoy*, No. 19-10756, 2019 WL 7342437, at \*4 (Bankr. D. Mass. Dec. 30,  
11 2019). Both concerns exist with the instant loan. The Debtor’s proposed loan terms include, *inter alia*,  
12 a 10% interest rate on the borrowed money, a 22% default interest rate, and administrative priority for  
13 the Lender. The Debtor has provided zero evidence that these terms are “fair and reasonable.” For  
14 instance, there is no evidence as to how the terms were negotiated or where else the Debtor looked for  
15 financing. *In re Aqua Assocs.*, 123 B.R. 192, 194 (Bankr. E.D. Pa. 1991). The Motion should be  
16 rejected for this reason alone. *In re Lahijani*, 325 B.R. at 290–92.

17  
18 3. The Lender should not be afforded any priority over other creditors, particularly where the  
19 Debtor has not showed the money is necessary. Gray echoes the Committee’s arguments that the  
20 Lender should be treated as an unsecured creditor. Furthermore, debt only constitutes an administrative  
21 expense where it “constitute[s] an actual and necessary cost or expense of preserving the estate.” *In re*  
22 *Shachoy*, 2019 WL 7342437, at \*4 (denying motion to obtain post-petition financing). At this stage,  
23 the Debtor has provided no actual evidence that it has any feasible plan for its alleged reorganization.  
24 (See ECF No. 85 at 8–9). Accordingly, the Debtor certainly has not shown a need for \$7 million. Nor

1 has the Debtor even substantiated the need for the interim \$400,000 because, as explained below, the  
2 utility of paying for many items in the proposed budget remains unclear. More fundamentally, there  
3 is no explanation of how any of the proposed funding will help the Debtor reorganize and start earning  
4 money, as opposed to simply adding to the pile of debt that will never be repaid.

5 4. Payroll information must be provided before the proposed budget is approved. In addition to  
6 the Committee's objections to the Debtor's proposed budget, Gray notes that he previously objected  
7 that the Debtor has not provided even the most basic information about the individuals it alleges to  
8 employ, such as payroll records, schedules, and job descriptions. The Debtor completely ignored this  
9 objection and still fails to provide this information. A payroll budget and the further expenditure of  
10 the Debtor's funds should not be approved until this information is provided.

11 5. The budget must provide for the protection of any personal property. In the event that Gray  
12 and Fanter's motion to lift the stay and liquidate the personal property is not immediately granted (*see*  
13 ECF No. 48), the Debtor's budget should be required to make provisions to protect that property from  
14 theft, damage, and destruction by fire or natural disaster, as well as to allocate funding to make  
15 adequate protection payments to Gray and Fanter as well as Clear Management. 11 U.S.C. § 362(d).

16 6. There must be a process to decide what litigation by the Debtor should be pursued. In addition  
17 to the present budget's allocation of \$100,000 per month to pay Chapter 11 professionals, the Debtor  
18 is also paying its special counsel Michael Chen a rate of \$350 hour to pursue litigation outside the  
19 bankruptcy. In the year prior to the Petition Date, Mr. Chen alone was paid \$229,227 in fees and costs  
20 by the Debtor. (ECF No. 13). Litigation is generally stayed during a bankruptcy, and any litigation by  
21 the Debtor should only occur if it is appropriately determined to be in the interest of the Debtor's  
22 estate. There is good cause to suspect that the Debtor is not presently equipped to make such  
23 determinations. For instance, after losing its motion for a TRO, the Debtor continues to pursue  
24

1 litigation in federal court against various government entities and officials that has wasted money  
2 raising frivolous claims—many of which were dismissed before a motion to dismiss was even filed.  
3 The Debtor also had three lawyers appearing at a contempt proceeding, but still presented frivolous  
4 arguments that ignored controlling Ninth Circuit precedent. Rather than use money to pay creditors,  
5 the Debtor is also seeking to lift the stay to pursue an appeal of Gray’s judgment before the Ninth  
6 Circuit. Before more money is wasted, it is necessary to establish some process for determining what  
7 litigation and what litigation tactics are truly in the best interest of the estate and not simply wasteful.

8 7. The Debtor has not demonstrated who has the authority to execute the Loan. In the Loan, the  
9 Debtor makes a representation that it has “been duly authorized by all necessary or proper action” to  
10 agree to the loan. (Loan ¶ 3.3(b)). The Debtor has not provided corporate documents to show who has  
11 the power and authority to make such a decision. The Loan submitted to the Court does not even state  
12 who will be executing it on behalf of the Debtor—although presumably that individual is required to  
13 have considered that this loan is necessary, is in the best interest of the Debtor, and represents fair and  
14 reasonable terms for such a loan.  
15

16 8. The Lender has no address at which notice can be served. Since no address is provided, there  
17 is no method of providing notice to the Lender under the Loan that has been presented to the Court.  
18 (*Id.* ¶ 8.2). In other words, the Debtor will owe \$400,000 (or maybe \$7 million) to an individual who  
19 neither the Court, the U.S. Trustee, nor the creditors have any idea of how to contact.  
20

21 \* \* \*

22 When the Debtor first submitted this Motion, it had failed to even comply with the statutory  
23 requirements, such as furnishing the proposed contract. In addition, Gray and the other creditors raised  
24 numerous substantive objections to the Motion. In its modified motion, the Debtor neglects to address  
may of the objections that had been raised, and also utterly fails to meet its burden under the law to

1 establish that this loan is necessary and that its terms are fair and reasonable. The “showing” made by  
2 the Debtor to suggest that the Lender is not an insider is, to put it mildly, grossly underwhelming. The  
3 law is clear that the Court is not here to simply rubber-stamp whatever financing arrangement the  
4 Debtor submits. Since the Debtor has failed to provide the necessary evidence to show that the  
5 proposed terms are necessary, fair, and reasonable, the Motion should be denied.

6  
7 Dated: May 27, 2024

8  
9 Respectfully submitted,

10 \_\_\_\_\_  
11 /s/

12 Aaron Halegua  
13 Bruce Berline

14 Attorneys for Joshua Gray  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24