



**ORDER NOT FOR PUBLICATION**  
**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**LOS ANGELES DIVISION**

In re:  
EcoSmart, Inc.,  
Debtor.

Case No. 2:15-bk-27139-RK

Chapter 7

**SUPPLEMENTAL ORDER ON  
DEBTOR'S MOTION FOR ORDER TO  
PAY PRE-PETITION WAGES,  
EMPLOYEE DEDUCTIONS AND  
RELATED RELIEF**

**Further Hearing:**

Old Date: November 17, 2015

Old Time: 1:30 p.m.

New Date: November 25, 2015

New Time: 10:30 a.m.

Place: Courtroom 1675  
255 East Temple Street  
Los Angeles, CA 90012

Pending before the court is the remaining portion of Debtor's motion for an order authorizing it to pay pre-petition wages, employee deductions and related relief, currently set for hearing on November 17, 2015 at 1:30 p.m. At the initial hearing on the motion heard on shortened notice on November 12, 2015, pursuant to Local Bankruptcy Rule 2081-1, the court granted the motion in part to allow payment of prepetition priority wages to the Debtor's employees pursuant to 11 U.S.C. § 507(a)(4)(A), but reserved ruling on payment of prepetition commissions to independent contractors, pending submission of

1 admissible evidence showing that such independent contractors met the test of 11 U.S.C.  
2 § 507(a)(4)(B) that Debtor is the source of at least 75 percent of the commissions paid to  
3 each independent contractor in the 12 months before the filing of the bankruptcy petition.

4 Debtor filed supplemental pleadings, including declarations of two independent  
5 contractors, Katherine Lam and Pau Torruella, and of its chief executive officer,  
6 Alexander Eburne, regarding Ms. Lam's work as a temporary contract worker for Debtor  
7 in providing graphic design services. Both of these workers attest that Debtor is the  
8 source of at least 75 percent of their earnings during the 12-month period before the filing  
9 of Debtor's bankruptcy petition on November 8, 2015. However, other than for these two  
10 workers, Debtor did not submit other evidence that the claims of other independent  
11 contractors it seeks authorization to pay now meet the statutory standard of 11 U.S.C. §  
12 507(a)(4)(B).

13 However, Debtor's supplemental pleadings also included a memorandum of points  
14 and authorities requesting that the court reconsider its tentative ruling that independent  
15 contractors qualify for priority claim treatment only under 11 U.S.C. §507(a)(4)(B) and  
16 that such qualify for priority claim treatment under 11 U.S.C. § 507(a)(4)(A) since there is  
17 no limiting language to employees only. In the points and authorities, Debtor requests  
18 that it be authorized to pay outstanding prepetition payments owed to all independent  
19 contractors under 11 U.S.C. § 507(a)(4)(A), that is, without being subject to the  
20 requirement of 11 U.S.C. § 507(a)(4)(B) that at least 75 percent of an independent  
21 contractor's earnings from sale of goods or services come from Debtor in the 12 months  
22 immediately preceding the filing of Debtor's bankruptcy petition. *Supplement to Motion*  
23 *for an Order Authorizing the Debtor to Pay Pre-Petition Wages, Employee Deductions*  
24 *and Related Relief*, ECF 25, at 2-9, *citing inter alia*, *In re Corcoran*, 2010 WL 5207589  
25 (Bankr. D. Haw. 2010); *but see*, 4 Resnick and Sommer, *Collier on Bankruptcy*, ¶  
26 507.06[3][b] at 507-29 (16th ed. 2015), *citing*, 11 U.S.C. § 507(a)(4)(B) ("For  
27 commissions owed to independent contractors to qualify for priority, the independent  
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1 contractor must have been acting as such for the debtor with regard to the sale of goods  
2 or services in the ordinary course of the debtor's business.") .

3 After considering Debtor's supplemental pleadings and some preliminary legal  
4 research of the issues raised by the motion, the court believes that it would be helpful for  
5 the court to issue a written opinion on these issues in light of the paucity of case law on  
6 these issues. However, given the shortened time for considering the motion, including  
7 Debtor's supplemental pleadings, the court will rule now as follows:

- 8 1. The motion is further granted in part to authorize Debtor to pay the prepetition  
9 commissions of Katherine Lam and Pau Torruella since it appears that they  
10 have made a prima facie showing that their claims would be entitled to priority  
11 status of 11 U.S.C. § 507(a)(4)(B) since Mr. Torruella attests that more than  
12 75% of his commissions from sales of goods or services are earned from  
13 Debtor and Ms. Lam attests that more than 75% of her commissions are  
14 earned from acting as an independent contractor in the sale of goods or  
15 services (i.e., graphic design services) was earned from Debtor. However, this  
16 authorization to pay the prepetition commissions of these workers is subject to  
17 the same conditions in the court's initial order on the motion entered on  
18 November 12, 2015 that the amount paid to each worker may not exceed the  
19 limit of 11 U.S.C. § 507(a)(4), that neither worker is an insider of Debtor and  
20 that the payment to both of these workers will not render the Debtor  
21 administratively insolvent.
- 22 2. The further hearing on the motion scheduled for November 17, 2015 at 1:30  
23 p.m. is continued to November 25, 2015 at 10:30 a.m. The court will hear  
24 further argument from Debtor and other interested parties at that time. No  
25 appearances are required on November 17, 2015.
- 26 3. Debtor is authorized to file further declarations of other independent  
27 contractors for whom it seeks authorization to pay their prepetition  
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1 commissions to show that they satisfy the conditions of 11 U.S.C. §  
2 507(a)(4)(B).

3 IT IS SO ORDERED.

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23 Date: November 16, 2015



24 Robert Kwan  
25 United States Bankruptcy Judge  
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