



Paul Sala
Paul Sala, Bankruptcy Judge

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**IN THE UNITED STATES BANKRUPTCY COURT
THE DISTRICT OF ARIZONA**

In re:
ANDES INDUSTRIES, INC.,
PCT INTERNATIONAL, INC.,
Debtors.

Chapter 11 Proceedings
Case No.: 2:19-bk-14585-PS
Joint Administration With
Case No. 2:19-bk-14586-PS
Adv. No: 2:20-ap-00118-PS

This filing applies to:
 Both Debtors
 PCT International
 Andes International

**DECLARATORY JUDGMENT
FINDING THAT DEFENDANT
SMALL BUSINESS
ADMINISTRATION'S PROHIBITION
AGAINST DEBTORS IN
BANKRUPTCY FROM
PARTICIPATING IN THE
PAYCHECK PROTECTION
PROGRAM IS UNENFORCEABLE
AND IS SET ASIDE**

PCT INTERNATIONAL, INC.,
Plaintiff,
v.
JOVITA CARRANZA, IN HER
CAPACITY AS ADMINISTRATOR FOR
THE U.S. SMALL BUSINESS
ADMINISTRATION,
Defendant.

Based upon the Court's findings of fact and conclusions of law placed on the record at the hearing held on June 12, 2020 at 12:30 p.m., which are incorporated herein by this

1 reference,

2 IT IS HEREBY ORDERED AND JUDGMENT IS HEREBY ENTERED as follows:

3 A. This Court has jurisdiction over this adversary proceeding pursuant to 28
4 U.S.C. §§ 157 and 1334(b) because it arises under 11 U.S.C. §§ 101 et seq. (the “Bankruptcy
5 Code”) and arises in a case under the Bankruptcy Code.

6 B. This is a core matter pursuant to 28 U.S.C. § 157(b)(2)(A), (D), and (O).

7 C. The rules, regulations and forms adopted, posted and/or promulgated by
8 Defendant Small Business Administration (“SBA”), which prevent or preclude entities that
9 are in a bankruptcy proceeding or are “presently involved in any bankruptcy” (collectively,
10 the “No Bankruptcy Requirement”) from participating in the “Paycheck Protection Program”
11 (“PPP”) implemented as part of the Coronavirus Aid, Relief, and Economic Security Act,
12 H.R. 748 (the “CARES Act”) are “in excess of statutory jurisdiction, authority, or
13 limitations, or short of statutory right” (5 U.S.C. § 706(2)(A)).

14 D. The No Bankruptcy Requirement is, therefore, unlawful and is hereby set
15 aside.

16 E. The SBA, and anyone acting in concert with or at the direction of the SBA,
17 including any lender from whom PCT International, Inc. (“PCT” or “Plaintiff”) seeks a PPP
18 loan may not deny Plaintiff a loan under the PPP based on Plaintiff’s status as a chapter 11
19 debtor or based on the words “or presently in bankruptcy” on Plaintiff’s PPP Application or
20 the PPP lender’s application.

21 F. All references to Plaintiff’s status as being involved in any bankruptcy shall be
22 removed from its PPP Application, and from any PPP loan policies and procedures and PPP
23 loan agreements relating to Plaintiff.

24 G. All lending institutions administering PPP loans to which Plaintiff has
25 submitted a PPP Application are instructed that Plaintiff is not excluded from the PPP
26 loan program on account of Plaintiff’s involvement in this Bankruptcy Case.

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28 H. Plaintiff is authorized to submit a PPP Application, and/or any other

1 documents necessary for the processing of the PPP Application, to a participating lender of
2 its choosing with the words “or presently involved in any bankruptcy” stricken from the
3 PPP Application and without any reference to this Bankruptcy Case, and any lender shall
4 consider such PPP Application and other documentation to be complete and accurate.

5 I. This declaratory judgment is a final judgment and order and there is no just
6 reason for delaying its implementation.

7 SO ORDERED AND ADJUDGED as of the date set forth above.
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