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12 UNITED STATES BANKRUPTCY COURT  
13 DISTRICT OF ARIZONA

14 In re:  
15 BLUE ICE INVESTMENTS, LLC,  
16 STARPLEX CORPORATION,  
17 Debtors.

In Chapter 11 Proceedings  
Case No: 2:20-bk-02208-DPC  
Case No: 2:20-bk-02224-EPB  
(Jointly administered under  
Case No: 2:20-bk-02208-DPC)

18 This filing applies to:  
19 \_\_\_ All Debtors  
20 \_\_\_ X \_\_\_ Specified Debtors

Adversary Proceeding No:

21 STARPLEX CORPORATION,  
22 Plaintiff  
23  
24 v.  
25 JOVITA CARRANZA, in her capacity as  
26 Administrator for the Small Business  
27 Administration,  
28 Defendant.

**COMPLAINT**  
**(Injunctive Relief, Declaratory Relief)**

1 For its Complaint against the above-named Defendant, Plaintiff alleges:

2 **PARTIES TO THE ACTION**

3 1. Plaintiff, Starplex Corporation (“Starplex”) is an Oregon corporation.

4 2. Defendant Jovita Carranza (“Defendant”) is the Administrator for the Small  
5 Business Administration (“SBA”). The SBA is an independent agency of the United States  
6 government. Defendant can sue and be sued in any court of general jurisdiction. 11 U.S.C.  
7 § 634(b).

8 **JURISDICTION AND VENUE**

9 3. This Court has original subject matter jurisdiction over the claims set forth  
10 in this Complaint because the claims set forth herein are for permissible injunctive relief  
11 and declaratory relief under 15 U.S.C. § 634(b), and 28 U.S.C. §§ 157(b)(1), 2201(a), 1331  
12 and 1334(b).

13 4. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a).

14 **GENERAL ALLEGATIONS**

15 5. For more than thirty years, Starplex, doing business as Crowd Management  
16 Services, has operated as one of the largest crowd management businesses in the Pacific  
17 Northwest, serving clients in Oregon, Washington, Montana, Idaho, Alaska, Wyoming,  
18 and North Dakota.  
19

20 6. Starplex filed for relief under subchapter V of chapter 11 of the Bankruptcy  
21 Code on March 4, 2020, after creditors called several notes due.  
22

23 7. As debtor in possession, Starplex was still operating its business and about  
24 to enter its busy season.  
25

26 8. As of the filing date, Starplex anticipated filing a chapter 11 plan that paid  
27 all of its creditors in full using income from its business operations.  
28

1           9.     Because of the COVID-19 global pandemic, Starplex’s business was  
2 severely reduced to the point that it cannot remain viable and pay its creditors without an  
3 unexpected return to circumstances prior to the pandemic or without accessing relief under  
4 the Coronavirus Aid, Relief, and Economic Security Act (“the CARES Act”), which was  
5 adopted on March 26, 2020 by the United States federal government in response to the  
6 pandemic.  
7

8           10.    Section 1102 of the CARES Act is the Paycheck Protection Program  
9 (“PPP”), which provides up to \$350 billion in loans to qualified businesses to be used for  
10 specific purposes, such as payroll, rent, utilities and payments on pre-existing debts.  
11

12           11.    The statute says PPP loans are made under section 7(a) of the Small Business  
13 Act. CARES Act at section 1102(a).  
14

15           12.    A qualified business can receive a PPP loan equal to 2.5 times its average  
16 monthly payroll, up to a limit of \$10 million. *Id.*  
17

18           13.    PPP loans may be fully forgiven under certain circumstances. CARES Act at  
19 section 1102.  
20

21           14.    PPP Loans also explicitly waive certain requirements under section 7(a) of  
22 the Small Business Act, such as the exhausting other credit options first, prepayment  
23 penalties, and personal guarantee requirements. *Id.*  
24

25           15.    Payments on PPP loans are also deferred for at least six months. *Id.*  
26

27           16.    There is no statutory provision in either the CARES Act or the Small  
28 Business Act that prohibits extending a PPP loan to a debtor and debtor in possession under  
chapter 11 of the Bankruptcy Code.

1           17. To receive a PPP Loan, a qualified business must apply with any federally  
2 insured participating lender, using an application form created by the SBA.

3           18. On or about April 2, 2020, the SBA released forms of applications for PPP  
4 loans.

5           19. Even though section 1102 does not prohibit extending a PPP loan to a chapter  
6 11 debtor in possession, the PPP application form asks if “the Applicant ... [is] presently  
7 involved in any bankruptcy.” *See* Question No. 1, Paycheck Protection Program Borrower  
8 Application Form, attached as Exhibit A.

9           20. The application form says “[i]f questions (1) or (2)<sup>1</sup> below are answered  
10 “Yes,” the loan will not be approved.” *Id.* (underlining in original).

11           21. Notwithstanding the prohibition in the PPP application form, Starplex  
12 submitted a PPP application to Northwest Bank, and answered “yes” to Question No. 1.

13           22. Northwest Bank rejected the application because it said Starplex did not  
14 “qualify” for a PPP loan due to its chapter 11 bankruptcy. *See* email from Northwest Bank,  
15 attached as Exhibit B.

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26 <sup>1</sup> Question 2 asks if the applicant “ever obtained a direct or guaranteed loan from SBA or  
27 any other Federal agency that is currently delinquent or has defaulted in the last 7 years  
28 and caused a loss to the government.” Starplex can answer “No” to this question because,  
while it is delinquent on its SBA loan, it is not yet known if the delinquency has “caused  
a loss to the government.” In fact, getting a PPP loan will make a loss to the government  
much less likely.

1           23. Northwest Bank sent Starplex the “Lender Application Form” that also  
2 recites that lenders may not approve loans unless borrowers certify they are “not presently  
3 involved in any bankruptcy.” Exhibit C.

4           24. Starplex filled out the application form sent by Northwest Bank and applied  
5 for a PPP loan in the amount of \$1,604,744.00. *Id.*

6           25. Starplex meets all other requirements for receipt of a PPP loan.

7           26. Upon information and belief, Starplex’s PPP application would have been  
8 approved but for its “involvement in any bankruptcy.”  
9

10           27. Starplex has virtually no current business income because large events  
11 nationwide, and specifically within Starplex’s business territory, have been cancelled at  
12 least into July 2020.  
13

14           28. Starplex has also applied for a loan and grant under section 1110 of the  
15 CARES Act (the EIDL grant and loan), but it is unknown if its loan under section 1110  
16 will be approved. Although credit requirements are relaxed for a section 1110 EIDL loan,  
17 an applicant must satisfy creditworthiness requirements.  
18

19           29. Compared to EIDL loans and grants under the section 1110 of the CARES  
20 Act, a PPP loan is or should be automatically granted to an applicant who meets the  
21 requirements of section 1102 of the CARES Act.  
22

23           30. Compared to EIDL loans and grants under the section 1110 of the CARES  
24 Act, a PPP loan contains forgiveness terms that potentially could lead to complete  
25 forgiveness of the loan.  
26  
27  
28

1           31.     Without a PPP loan, it is likely Starplex cannot meet payroll, rent, utility, or  
2 debt obligations, including its monthly insurance payment.

3           32.     Without a PPP loan, Starplex will likely cease to be a viable company and  
4 will have to convert its case to a chapter 7 liquidation, which will result in most, if not all,  
5 creditors receiving no money in satisfaction of their debts.  
6

7  
8                                   **COMPLAINT FOR INJUNCTIVE RELIEF**  
9                                   **(Preliminary and Permanent Injunction)**

10           33.     Plaintiff incorporates the allegations of paragraphs 1 through 32 as though  
11 fully set forth herein.

12           34.     Starplex is entitled to seek relief pursuant to Fed. R. Civ. P. 65 and Fed. R.  
13 Bankr. P. 7065 for a Court order enjoining the SBA from requiring applicants to not be  
14 “presently involved in any bankruptcy” to qualify for a PPP loan.

15           35.     There is no such requirement in section 1102 of the CARES Act or under §  
16 7(a) of the Small Business Act.

17           36.     There is no such requirement in the SBA’s own final interim rule or in federal  
18 banking rules adopted to give guidance to lenders regarding the PPP loan program.

19           37.     By enforcing this requirement, the Defendant is exceeding her authority  
20 under the CARES Act.

21           38.     Starplex is likely to prevail on the merits.

22           39.     The balance of hardships favor issuance of preliminary injunctive relief. Not  
23 receiving a PPP loan may cause Starplex and its creditors to suffer immediate and  
24 irreparable harm by forcing Starplex to liquidate and result in most of its creditors receiving  
25 nothing. Preliminary and permanent injunctive relief while this matter is pending will not  
26 cause any harm to Defendant.  
27  
28

1 **COMPLAINT FOR DECLARATORY RELIEF**

2 40. Plaintiff incorporates the allegations of paragraphs 1 through 39 as though  
3 fully set forth herein.

4 41. Neither the PPP nor the Small Business Act prohibit approving a PPP loan  
5 application for Starplex based on its status as a debtor and debtor in possession under  
6 chapter 11 of the Bankruptcy Code.

7 42. Plaintiff has a legal right to apply for a PPP loan and have it considered on  
8 the same terms as other applicants without regard to its status as a chapter 11 debtor and  
9 debtor in possession.

10 43. By prohibiting the approval of PPP loans to chapter 11 bankruptcy debtors,  
11 Defendant has exceeded her statutory authority.

12 44. Starplex is entitled to declaratory judgment that the CARES Act requires its  
13 PPP loan application be considered on the same terms as other qualified businesses that are  
14 not “presently involve[d] in any bankruptcy.”  
15

16 WHEREFORE, Starplex prays that the Court:

17 A. Issue a preliminary injunction and require the Defendant to change the PPP  
18 application form by removing the language “or presently involved in any bankruptcy” from  
19 Question No. 1;

20 B. To issue a permanent injunction prohibiting the use of an otherwise qualified  
21 business’s status as a chapter 11 debtor and debtor in possession as a reason for rejecting a  
22 PPP loan application;

23 C. Find in Starplex’s favor on all claims alleged herein;

24 D. Award Starplex its attorney's fees and costs pursuant to the Equal Access to  
25 Justice Act, 28 U.S.C. § 2412; and

26 E. Award such other relief as is deemed just and proper.  
27  
28

1                   **DATED** this 13<sup>th</sup> day of April, 2020.

2                                   UDALL SHUMWAY PLC

3  
4                   By /s/ Joel E. Sannes  
5                                   Joel E. Sannes  
6                                   Carson T. H. Emmons  
7                                   1138 N. Alma School Rd., Ste. 101  
8                                   Mesa, AZ 85201  
9                                   *Attorneys for Debtors and*  
10                                   *Debtors-In-Possession*

11                                   **Verification**

12                   Randy Scott, under oath, does swear and affirm based on my own personal  
13 knowledge that the facts in the foregoing are true and correct and if not based on my own  
14 personal knowledge, I believe the facts to be true and correct.  
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17                                   /s/ Randy Scott  
18                                   Randy Scott  
19                                   Senior Vice President for Starplex Corporation  
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