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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:

BLUE ICE INVESTMENTS, LLC,
STARPLEX CORPORATION,
Debtors.

This filing applies to:

☐ All Debtors

☒ Specified Debtors

STARPLEX CORPORATION,
Plaintiff

v.

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)

**DEBTORS' RULE 60(b)(6) MOTION
TO REINSTATE
AND REQUEST FOR EXPEDITED
RELIEF**

JOVITA CARRANZA, in her capacity as
Administrator for the Small Business
Administration,

Defendant.

Pursuant to Fed. R. Civ. P. 60(b), made applicable by Fed. R. Bankr. P. 9024, Debtors Blue Ice Investments, LLC and Starplex Corporation (“Debtors”), through undersigned counsel, hereby request that the Court reinstate this consolidated chapter 11 case because reinstatement is in the best interests of all creditors. Debtors also seek an order that the claims bar date for creditors to file claims be extended for one calendar week after Debtors’ Chapter 11 Proceedings are reinstated. Debtors also seek an order that the date for Debtors to file their plan of reorganization, which was June 4, 2020, be extended to one calendar week after the claims bar date.

Debtors request expedited consideration of this Motion to permit the matter to be reinstated without delay so that all claims may be filed and Debtors can file their plans of reorganization.

In support, Debtors respectfully states as follows:

BACKGROUND

1. On March 4, 2020, the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Petition Date”).

1
2 2. From March 4, 2020 to May 22, 2020, the Debtors were operating their
3 business and managing their affairs as a debtor in possession. No trustee, examiner, or
4 statutory committee had been appointed.

5 3. On April 13, 2020 Debtor Starplex filed an adversary action against the
6 United States Small Business Administration (“SBA”) seeking declaratory relief and
7 injunctive relief that the SBA permit Starplex to apply for a loan under Section 1102 of
8 the CARES Act, the Paycheck Protection Program (“PPP”). *See* [Doc. 2:20-ap-00095-
9 DPC].
10

11 4. Debtors intended, if successful in their action against the SBA and if
12 successful in obtaining a PPP loan, that Starplex would use the proceeds of the PPP loan
13 to fund a Chapter 11 reorganization plan using the PPP loan proceeds as allowed by the
14 PPP and using other ongoing revenue.
15

16 5. On May 21, 2020, the Court in the adversary action denied Starplex’s
17 request for preliminary injunctive relief. [Doc. 33].
18

19 6. On May 21, 2020, Debtors filed a Motion to Dismiss these consolidated
20 Chapter 11 proceedings. [Doc. 49].
21

22 7. On May 22, 2020, the Court granted Debtors’ Motion to Dismiss. [Doc.
23 33]. A dismissal order was uploaded on May 22, 2020, signed and entered on June 1,
24 2020. [Doc. 53].
25

26 8. On May 26, 2020, Debtor Starplex filed an application outside bankruptcy
27 for a PPP loan with Starplex’s bank, KeyBank, in Portland, Oregon.
28

 9. On May 28, 2020 KeyBank notified Starplex that the SBA had approved
the KeyBank PPP loan to Starplex for \$1,572,285.20

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3 10. On June 1, 2020, funds from the PPP loan were deposited into a KeyBank
4 bank account that Starplex opened for purposes of receiving the PPP loan proceeds.

5 11. After receipt of the PPP loan proceeds, Starplex rehired 12 managers and
6 paid them modest incentive bonuses for the managers to resume their employment with
7 Starplex.
8

9 12. On June 5, 2020, Starplex gave wiring instructions for KeyBank to transfer
10 the PPP loan proceeds to Starplex's Debtor-in-Possession account established in this
11 matter.
12

13 **ARGUMENT**

14

15 13. Rule 60(b) of the Federal Rules of Civil Procedure, made applicable to this
16 bankruptcy case pursuant to Rule 9024 of the Federal Rules of Bankruptcy Procedure,
17 provides, in pertinent part, that, "On motion and just terms, the court may relieve a party
18 or its legal representative from a final . . . order, or proceeding for the following reasons:
19 (6) any other reason that justifies relief." A Rule 60 motion must be made within a
20 "reasonable time." Fed. R. Civ. P. 60(c)(1).
21

22 14. Rule 60(b)(6) should be "liberally applied . . . to accomplish justice." *In re*
23 *Int'l Fibercom, Inc.*, 503 F.3d 933, 941 (9th Cir. 2007) (citations omitted). A party who
24 moves for such relief "must demonstrate both injury and circumstances beyond his
25 control that prevented him from proceeding with ... the action in a proper fashion." *Id.*
26 (citations omitted).
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3 15. Debtors meet the standard for relief from the final order of dismissal.
4 Debtors' motion to dismiss stated that the reason Debtors were seeking dismissal was so
5 that they could apply for a PPP loan. [See Doc. 49, ¶ 9 ("[I]t is in the best interests of
6 creditors to permit the Debtor to voluntarily dismiss this case in order to access a PPP
7 loan.")].

8
9 16. Reinstating Debtors Chapter 11 proceedings is in the best interests of
10 Debtors' creditors. The only changed circumstances since dismissal on May 22, 2020 is
11 that Debtor Starplex was able to apply for a PPP loan outside of bankruptcy and obtained
12 the loan proceeds outside of bankruptcy. The PPP funds cannot be used to directly satisfy
13 Debtors' obligations to creditors. The SBA's April 15, 2020 Interim Final Rule,
14 implements Congress' restrictions on the use of PPP loan proceeds:
15

16
17 **r. How can PPP loans be used?**

18 The proceeds of a PPP loan are to be used for:

- 19 i. payroll costs (as defined in the Act and in 2.f.);
20
21 ii. costs related to the continuation of group health care benefits during
22 periods of paid sick, medical, or family leave, and insurance
23 premiums;
24
25 iii. mortgage interest payments (but not mortgage prepayments or
26 principal payments);
27
28 iv. rent payments;
v. utility payments;

vi. interest payments on any other debt obligations that were incurred before February 15, 2020; and/or

vii. refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020.

85 FR 20811.

17. Because Congress restricted use of PPP loan proceeds to the categories listed above, the fact that Starplex has proceeds from the PPP loan does not mean the funds can be used outside of bankruptcy for Starplex to pay creditors or for creditors to attach in collections proceedings. If Starplex is unable to use the funds properly, it would be obligated to return the funds.

18. Inside this Chapter 11, Debtor Starplex can use the PPP funds to pay its employees, its employees' benefits, utilities and rent. If it uses at least 60% of the PPP funds to pay employees, the loan can be forgiven. *See* CARES Act § 1106. The President today signed legislation amending the PPP sections of the CARES Act to allow forgiveness of all PPP loan proceeds if at least 60% of the loan proceeds are used on payroll, and the amendment also extended the period in which the forgiven payments must be made from 8 weeks to 24 weeks.

19. Debtors have calculated that Starplex will use at least 60 percent of its PPP loan proceeds for payroll. It is likely that all of the PPP loan or a significant percentage of the loan will be forgiven.

20. While it uses its PPP loan proceeds for payroll, rent and utilities, Debtor's income can be used to fund what Debtors anticipate will be a full repayment plan. The

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3 likelihood that Debtors will propose and complete a full repayment plan is by far the
4 best opportunity creditors have to be paid.

5 21. Debtors' meet the requirements for relief under Fed. R. Civ. P. 60(b)(6).
6 The requirement that Debtors exit from bankruptcy and receive PPP loan proceeds
7 outside bankruptcy required Debtors to move to dismiss their Chapter 11 proceedings.
8 Reinstating the Chapter 11 proceedings will accomplish justice, allowing Starplex to
9 propose a reorganization plan that allows it to retain its employees, serve its customers,
10 and repay creditors. The passage of the CARES Act after Debtors petitioned, and the
11 requirement that Debtors not be involved in any bankruptcy proceedings to qualify for
12 a PPP loan were circumstances beyond debtors' control.
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15 22. The claims bar date in this matter was May 27, 2020. Because creditors
16 may have elected not to file claims between May 22, 2020 and May 27, 2020 because
17 the proceedings were dismissed on May 22nd, it is fair and reasonable for the bar date to
18 be extended for one calendar week after the Court grants Debtors' Motion to Reinstate.
19 Debtors will provide a new notice of the claims bar date in accordance with the rules.
20

21 23. Debtors' deadline for filing a plan of reorganization was June 4, 2020.
22 Debtors are prepared to submit a plan of reorganization, but to provide Debtors an
23 opportunity to review any new claims that have not yet been filed, Debtors request the
24 Court set the deadline for Debtors to file their plan of reorganization to one calendar
25 week after the amended claims bar date.
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3 24. Debtors' May 2020 Operating Report was due on May 21, 2020 or earlier.
4 Debtors did not file the May 2020 Operating Report but will file an Operating Report
5 on or before June 8, 2020.

6 **WHEREFORE**, the Debtors respectfully request the Court enter an order
7 pursuant to Fed. R. Civ. P. 60(b)(6) reinstating this chapter 11 case, that the Court amend
8 the claims bar date to allow claims to be filed one calendar week after entry of the order
9 reinstating the case, and that the Court permit Debtors to file their plans of reorganization
10 one calendar week after the claims bar date. A form of order is attached hereto as Exhibit
11 A.
12

13
14 **DATED** this 5th day of June, 2020.

15
16 UDALL SHUMWAY PLC

17 By /s/ Joel E. Sannes

18 Joel E. Sannes

19 Carson T. H. Emmons

20 1138 N. Alma School Rd., Ste. 101

21 Mesa, AZ 85201

22 *Attorneys for Debtors and*

Debtors-In-Possession

23 COPY of the foregoing filed via ECF
24 with COPIES e-mailed this 5th day of June
25 2020 to:

26 Elizabeth C. Amorosi

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12 *Subchapter V Trustee*

13
14 Copy of the foregoing mailed this
15 5th day of June
16 2020 to all parties on the master mailing list.

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/s/ Taylor D. Jensen

Exhibit A

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re

BLUE ICE INVESTMENTS, LLC

Debtor.

Chapter 11

Case No. 2:20-bk-02208-DPC

In Re

STARPLEX CORPORATION,

Debtor

Case No. 2:20-bk-02224-EPB

**ORDER REINSTATING DEBTORS
CHAPTER 11 PETITIONS**

This matter having come before the Court on Debtors' Blue Ice Investments, Inc. ("Blue Ice") and Starplex Corporation ("Starplex") (together, the "Debtors") Rule 60(b)(6) motion to reinstate Debtors' chapter 11 proceedings, to amend the claims bar date, and to extend the date on which Debtors must file their plans of reorganization, and good cause appearing therefor,

IT IS HEREBY ORDERED:

1 1. Pursuant to Fed. R. Civ. P. 60(b)(6), made applicable in bankruptcy by
2 Rule 9024, Rules of Bankruptcy Procedure, the Court finds that reinstatement of Debtors'
3 Chapter 11 petitions will accomplish justice and that Debtors have established that
4 circumstances beyond Debtors' control caused their petitions to be dismissed. Therefore,
5 the Court vacates its order of dismissal and orders that Debtors' Chapter 11 Petitions are
6 reinstated.
7

8 2. The deadline ("Bar Date") by which any and all individuals or entities
9 asserting claims against the bankruptcy estates of the Debtors must file a Proof of Claim
10 for: (a) claims not listed in the Schedules of Assets and Liabilities (the "Schedules") as
11 they may be amended from time to time; (b) claims that are listed on the Schedules as
12 disputed, contingent or unliquidated; (c) claims that differ in any respect from those
13 listed in the Schedules (including, without limitation, whether listed as priority, secured
14 and/or unsecured or any right the Debtors may have to a setoff under 11 U.S.C. § 553
15 or otherwise) is extended for one calendar week from the date of this Order.
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19 3. Debtors shall have one calendar week from the amended claims bar date in
20 which to file their plans of reorganization.
21

22 4. Counsel for the Debtors shall promptly provide notice of this order to all
23 creditors and interested parties and shall file an affidavit of service within seven (7) days
24 of such service.
25

26 **DATED AND SIGNED ABOVE**
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