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UNITED STATES BANKRUPTCY COURT

DISTRICT OF ARIZONA

In re:

BLUE ICE INVESTMENTS, LLC,

STARPLEX CORPORATION,

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)

This filing applies to:

All Debtors

Specified Debtors

**DEBTORS' MOTION TO DISMISS
AND REQUEST FOR EMERGENCY
RELIEF**

Pursuant to 11 U.S.C. § 1112(b), Debtors Blue Ice Investments, LLC and Starplex Corporation ("Debtors"), through undersigned counsel, hereby seek dismissal of their bankruptcy cases for cause because dismissal is in the best interests of all creditors.

BACKGROUND

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3 1. On March 4, 2020, the Debtors filed voluntary petitions for relief under chapter
4 11 of the Bankruptcy Code (the "Petition Date"). The Debtors are operating their business and
5 managing their affairs as a debtor in possession. No trustee, examiner, or statutory committee
6 has been appointed.

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

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

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16 4. On May 21, 2020, the Court denied Starplex's request for preliminary injunctive
17 relief in the adversary proceeding.

18 5. On April 28, 2020, the SBA published a "Fourth Interim Final Rule" with the
19 Federal Register effective April 28, 2020. *See* 85 FR 20811, page 20811-201817. The Fourth
20 Interim Final Rule declared:
21

22 ***Eligibility of Businesses Presently Involved in Bankruptcy Proceedings. Will***
23 ***I be approved for a PPP loan if my business is in bankruptcy?***

24 No. If the applicant or the owner of the applicant is the debtor in a bankruptcy
25 proceeding, either at the time it submits the application or at any time before
26 the loan is disbursed, the applicant is ineligible to receive a PPP loan. If the
27 applicant or the owner of the applicant becomes the debtor in a bankruptcy
28 proceeding after submitting a PPP application but before the loan is disbursed,
it is the applicant's obligation to notify the lender and request cancellation of
the application. Failure by the applicant to do so will be regarded as a use of
PPP funds for unauthorized purposes.

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3 6. Based on the SBA's Fourth Interim Final Rule, the only feasible means by which
4 Starplex will be able to apply for a PPP loan is for this matter to be dismissed so that Starplex
5 may apply for a PPP loan.

6 7. Dismissal of this Chapter 11 case in order to permit the Debtor to access
7 significant forgivable credit under the CARES Act will be in the best interest of the estate and
8 will not unfairly prejudice other parties in interest.
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10 8. All creditors' best interests are served by dismissal to allow Starplex to apply for
11 a PPP loan. If Starplex is not able to apply for a PPP loan the most likely outcome is that this
12 matter will be converted to a Chapter 7 liquidation, in which case Debtors's assets will be
13 insufficient to pay any creditor, including Wells Fargo, the first-position secured creditor, and
14 junior secured creditors, more than an insignificant amount of Debtors' obligations to them. On
15 information and belief, administrative expenses in a Chapter 7 liquidation would likely absorb
16 most or all of whatever assets in the bankruptcy estate may be used to pay creditors from a
17 Chapter 7 bankruptcy estate.
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20 **ARGUMENT**
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22 9. Bankruptcy Code permits a party in interest, such as the Debtor in this case, to
23 seek dismissal of a bankruptcy case for cause, provided it is in the best interest of creditors, 11
24 U.S.C. § 1112(b). The Debtor submits that, under these very peculiar circumstances, it is in the
25 best interests of creditors to permit the Debtor to voluntarily dismiss this case in order to access
26 a PPP loan.
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3 10. Pursuant to Federal Rule of Bankruptcy Procedure 2002(a)(4), the Court
4 generally may not hold a hearing on a motion to dismiss a chapter 11 case on less than twenty-
5 one days' notice.

6 11. Federal Bankruptcy Rule 9006(c)(1) permits the Court to shorten such required
7 notice for cause. Cause exists in this case to shorten the required notice so that the Debtor may
8 quickly apply for a PPP loan. The funding pool for PPP loans is limited, and any delay in
9 applying for a PPP loan could result in Starplex being unable to obtain a PPP loan it otherwise
10 may qualify for because the limited funds are exhausted. In addition, the current deadline to
11 submit PPP applications is June 30, 2020.

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13 12. On May 21, 2020, the Court in this matter set an emergency hearing when Debtor
14 notified the Court that it may move for dismissal. The emergency hearing is set for May 22,
15 2020 at 1:00 p.m. Debtors have separately filed a Notice of Hearing and will notify Wells Fargo
16 through its counsel and all other parties through the ECF filing system of the hearing.

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18 **WHEREFORE**, the Debtor respectfully requests the Court, at or immediately after the
19 emergency hearing scheduled for May 22, 2020, enter an order dismissing this chapter 11 case,
20 and grant and further relief as the Court deems just and equitable.
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2 **DATED** this 21st day of May, 2020.
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4 UDALL SHUMWAY PLC
5

6 By /s/ Joel E. Sannes _____
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13 COPY of the foregoing filed via ECF
14 with COPIES e-mailed this 21st day of May,
15 2020 to:

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