Katherine Devanney, Esq. (admitted *pro hac vice*)
Deputy Attorney General
Delaware Department of Justice
820 N. French St., Floor 5
Wilmington, DE 19801
302-683-8812

Attorney for the State of Delaware

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Case No. 22-11293 (Prehired, LLC)
	:	Case No. 22-11310 (Prehired Accelerator, LLC)
PREHIRED, LLC, et al.,[1]	:	Case No. 22-11311 (Prehired Recruiting, LLC)
	:	(Not jointly administered)[2]

STATE OF DELAWARE'S REPLY IN SUPPORT OF MOTION TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1406 AND FED. R. BANKR. P. 1014(a)(2)

[1] The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification numbers, are: Prehired, LLC (0436), Prehired Accelerator, LLC (7910), and Prehired Recruiting, LLC (4322).

[2] The Debtors have not moved for joint administration of the Chapter 11 Cases.

Table of Contents

Table of Authorities

Cases

Statutes

The State of Delaware (the "State") submits this reply (the "Reply") in support of the *State of Delaware's Motion to Transfer Venue Pursuant to 28 U.S.C. § 1406 and Fed. R. Bankr. P. 1014(a)(2)* [D.I. 14][3] (the "Transfer Motion")[4] and response to the Debtors' opposition filed thereto [D.I. 22] (the "Opposition"; cited herein as Opp. at p. __). The State respectfully states as follows:

I. Preliminary Statement

1. The Debtors concede in the Opposition that venue in these Chapter 11 Cases is governed by 28 U.S.C. § 1408. Nevertheless, their sole authority supporting venue in this District consists of three Chapter 15 cases. The Debtors ask this Court to apply the holdings from those cases—all of which addressed a foreign entity's *eligibility* to be a debtor in the United States—to conclude that *venue* of the Chapter 11 Cases is proper in this District. They cite no support for their request, other than claiming that 28 U.S.C. §§ 1408 and 1410 have "similarities" that would allow the Court find that venue in this District is proper. The State respectfully submits that the Court should decline to adopt the Debtors' novel and unsupported venue theory and instead analyze venue of these Chapter 11 Cases under 28 U.S.C. § 1408 and well-established Chapter 11 case law from this District.

2. Venue is not proper in this District for two reasons. ***First***, the Debtors' intangible assets, which they claim constitute their principal assets, are located in Delaware and Florida—not New York. To avoid this conclusion, the Debtors suggest, relying entirely on inapposite authority, that their accounts receivable are located in this District because they contain New York venue and choice of law provisions. That argument is both legally and factually unsupportable.

3. As a legal matter, the Debtors' argument must fail under *In re Washington, Perito & Dubuc*, 154 B.R. at 861 (Bankr. S.D.N.Y. 1993), which held that, for purposes of 28 U.S.C. §

[3] All references to Docket Items refer to papers filed in Case No. 22-11293.
[4] Capitalized terms not defined herein shall have the meaning ascribed to such terms in the Transfer Motion.

1408, a debtor's accounts receivable are located in the District of the debtor's principal place of business.

4. As a factual matter, the Debtors have a clear and pervasive history of ignoring their own forum selection clauses by filing litigation outside of New York and are currently opposing the transfer to New York of a pending litigation matter that they filed in California. The State respectfully submits that the Debtors should be estopped from claiming that New York venue provisions in their income share agreements support a finding of proper venue in this District when they sued nearly **300** students in *Delaware* state court to enforce those agreements and have stated in the First Day Declaration that they intend to return to students' "respective state courts"—not New York—to continue enforcing defaulted agreements.

5. ***Second***, even if the Court were to find that the Debtors' principal assets were located in this District on the Petition Date, there is no evidence to suggest that those assets were located here for the preceding 180 days, as required by 28 U.S.C. § 1408. Nowhere in the First Day Declaration or Opposition do the Debtors assert that their principal assets have been in this District for the requisite time period to establish venue here. Thus, the Debtors have not made even a *prima facie* showing that venue is proper in this District.

6. Because venue is not proper in this District, the Court must transfer the Chapter 11 Cases to an appropriate venue or dismiss them. The State respectfully requests that the Court transfer the Chapter 11 Cases to the District of Delaware because that District is the more efficient and convenient of the two Districts where venue would be statutorily appropriate.

II. Argument

A. Venue is not proper under 28 U.S.C. § 1408.

1. Precedent from this Court squarely forecloses the Debtors' argument that their principal assets are located in this District.

7. The Debtors do not contend that their domiciles or principal places of business are located in this District. Opp. at p. 7. Instead, they assert that venue is proper in this District because their principal assets, comprised of a portfolio of accounts receivable and other intangible assets, are located in this District. The Debtors assert that these assets are located here because "nearly all" of their notes, contracts and causes of action are governed by New York law and/or contain New York venue provisions. Opp. at p. 4.

8. The Debtors' novel venue theory is directly at odds with this Court's previous decision in *In re Washington, Perito & Dubuc*, 154 B.R. 853 (Bankr. S.D.N.Y. 1993). In that case, the Court held that the "best approach for determining the location of accounts receivables is to utilize the approach taken by the Uniform Commercial Code with respect to the perfection of security interests[.]" *Washington*, 154 B.R. at 861. The Court reasoned that, because the debtor's place of business was located in the District of Columbia, a creditor would need to perfect its lien in that District to assert a valid security interest in the debtor's account receivables and put others on notice that those accounts receivable may be encumbered. *Id*. at 861. Thus, the Court concluded that the debtor's principal assets, its accounts receivable, were also located in the District of Columbia, and transferred the case accordingly. *Id*. at 862.

9. Under *Washington*, there is no question that the Debtors' intangible assets are located in Delaware and Florida, where their principal places of business are located and where a secured creditor would need to perfect its lien on those assets.[5] Indeed, the three secured creditors in this case each perfected their security interests in Prehired LLC's assets, including its intangible

[5] Section 9-301(1) of the U.C.C. provides "Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral." U.C.C. § 9-301(1). *See also* U.C.C. § 9-301, cmt. 4 ("Paragraph (1) contains the general rule: the law governing perfection of security interests in both tangible and intangible collateral, whether perfected by filing or automatically, is the law of the jurisdiction of the debtor's location, as determined under Section 9-307."). Under U.C.C. § 9-307(b), a debtor that is an organization and has only one place of business is located at its place of business.

assets, by filing financing statements with the Secretary of State of South Carolina which, until late 2021, was Prehired LLC's place of business. *See* Schedule D [D.I. 12], First Day Decl. at ¶ 43. Notably, none of the secured creditors in these Chapter 11 Cases perfected their security interests in New York.

2. Even if the Debtors' principal assets are *presently* located in this District, the Debtors have not asserted that those principal assets were located in this District for the 180 days preceding the Petition Date.

10. Even if the Court declines to follow the precedent established by *Washington* and instead concludes that the Debtors' intangible assets may be located in this District by virtue of their venue selection and/or choice of law provisions, that finding alone is not sufficient for the Court to conclude that venue is proper in this District. Venue in a Chapter 11 Case is only proper in the District in which the Debtors' principal assets have been located "***for the one hundred and eighty days immediately preceding [the] commencement [of the Chapter 11 Cases]***" 28 U.S.C. § 1408(1) (emphasis added).

11. Here, the Debtors have provided no evidence and do not argue anywhere in the First Day Declaration or Opposition that the Debtors' assets, assuming they are located here at all, were in this District for the 180 days preceding the Petition Date. Nor can they. One of the key assets they rely upon to establish venue in this District is a retainer deposited with their New York counsel on September 23, 2022—less than one week before the Petition Date. *See* Statement of Financial Affairs [D.I. 9].

12. Because the Debtors have not made even a *prima facie* showing that venue is proper in this District, the Court should conclude that venue is improper in this District and must transfer the Chapter 11 Cases to an appropriate venue or dismiss them.

B. The Court should not apply Chapter 15 case law to these Chapter 11 Cases.

13. Perhaps because they are unable to make the requisite showing of proper venue under 28 U.S.C. § 1408 as written, the Debtors ask this Court to apply case law from three Chapter 15 cases to conclude that venue is proper in this District.[6] The Debtors cite no authority that would allow the Court to apply Chapter 15 cases to this Chapter 11 venue dispute. Nor do they provide a single case where venue in a Chapter 11 case was determined, in whole or in part, by the choice of law or venue provisions in the debtor's contracts.

14. Despite their assertion that 28 U.S.C. §§ 1408 and 1410 have "similarities" that would lead the Court to draw the same conclusion regarding proper venue in a Chapter 11 Case as in a Chapter 15 case,[7] the two venue statutes are structured differently, operate differently, and serve different functions in relation to the underlying Chapter 11 case or Chapter 15 recognition proceeding.

15. ***First***, "a chapter 15 case unfolds far differently than a plenary chapter 11 case. There are few proceedings; the assets and claims are administered in the foreign proceeding by the foreign court." *In re Suntech Power Holdings Co., Ltd.*, 520 B.R. 399, 421 (Bankr. S.D.N.Y. 2014). Indeed, the Second Circuit has described the Chapter 15 venue statute as "purely procedural" when compared to the "unambiguous nature of the substantive and restrictive language used in Sections 103 and 109 of Chapter 15." *Drawbridge Special Opportunities Fund LP v. Katherine Elizabeth Barnet (In re Barnet)*, 737 F.3d 238, 250 (2d Cir. 2013).

16. ***Second***, unlike in a Chapter 11 case, there is no requirement under 28 U.S.C. § 1410 that a debtor's principal assets be located in a District for 180 days before the

[6] *See In re Inversora Eléctrica de Buenos Aires S.A.*, 560 B.R. 650 (Bankr. S.D.N.Y. 2016), *In re Berau Cap. Res. Pte Ltd.*, 540 B.R. 80 (Bankr. S.D.N.Y. 2015), *In re Octaviar Admin. Pty Ltd*, 511 B.R. 361 (Bankr. S.D.N.Y. 2014).
[7] Opp. at p. 5 ("Given the similarities of these statutes, the analysis undertaken in the Chapter 15 cases cited above should also be employed here.").

commencement of a case in that District. This allows chapter 15 debtors—but not chapter 11 debtors—to engage in "strategic maneuvers" to "manufacture eligibility and engage in venue tactics on the eve of filing a Chapter 15 petition." *In re Forge Grp Power Pty Ltd.*, 2018 WL 827913, at *13 (N.D. Cal. Feb. 12, 2018). *See also Suntech*, 520 B.R. at 413 ("Interpreting the Bankruptcy Code to prevent an ineligible foreign debtor from establishing eligibility to support needed chapter 15 relief will contravene the purposes of the statute to provide legal certainty, maximize value, protect creditors and other parties in interests and rescue financially troubled businesses."). As a result, it is entirely appropriate for a Chapter 15 debtor to deposit a bankruptcy retainer with counsel in a location of its choice ***solely*** to establish both debtor eligibility under Section 109(a) and, by necessary extension, venue of that recognition proceeding. *See In re B.C.I. Fins. Pty Ltd.*, 583 B.R. 288, 293-94 (Bankr. S.D.N.Y. 2018) (collecting cases); *Forge Grp. Power*, 2018 WL 827913 at *13 ("In light of the omission of this 180-day requirement from § 1410, an attorney retainer that remains the debtor's property in the United States at the time of commencing the Chapter 15 case is sufficient property for purposes of debtor eligibility under § 109(a), ***without requiring something more.***") (emphasis added).

17. But the same is not true in a Chapter 11 case, where a bankruptcy retainer deposited shortly before filing is, by definition, not located in the target venue for 180 days. Here, the Debtors' retainer with their New York counsel could not have been located in this District until September 23, 2022—less than *one week* before the Debtors filed the Chapter 11 Cases. *See* Statement of Financial Affairs [D.I. 9] (reflecting payment date of 9/23/22).

18. ***Third***, adopting the Debtors' argument will create a new avenue for forum shopping that will (i) be highly susceptible to abuse by unscrupulous debtors, and (ii) require expensive and time-consuming review of each and every one of the debtor's contracts to disprove. The Debtors

attempt to skirt this problem by claiming, in a rather conclusory fashion, that "many" or "nearly all" of their contracts have New York venue or choice of law provisions. *See* Opp. at p. 2, First Day Decl. at ¶ 1. But should the proper standard be the number of contracts with favorable contractual provisions, or the amount outstanding under those contracts? What percentage of contracts (or amount of total debt outstanding) must be governed by New York law to qualify as the debtor's "principal" assets? How should the Court handle accounts receivable that are doubtful or likely uncollectable?

19. Moreover, if a Chapter 11 *debtor* can establish venue by claiming that "most" or "nearly all" of its contracts have particular choice of law or venue provisions, it follows that other parties in interest should be able to present the same argument in support of a motion to transfer venue to a more convenient forum pursuant to 28 U.S.C. § 1412. The attendant discovery and document production obligations on a debtor would quickly become burdensome and needlessly drive up the costs of the bankruptcy. Those costs would only be compounded if, as is often the case, the debtor contends that some or all of its agreements contain trade secrets or other confidential information.

20. These problems are simply not present in a Chapter 15 proceeding, where the foreign debtor typically has relatively few assets in the United States. Identifying the venue and choice of law provisions contained in a single instrument (or small number of instruments) is a vastly different exercise than parsing through thousands of consumer contracts to identify whether, in the aggregate, they contain sufficient ties to the forum District to support venue.

C. The Debtors should be estopped from relying on New York state and Southern District of New York venue provisions that they routinely ignore.

21. The State respectfully submits that the Debtors should be estopped from claiming that venue is proper in this District in whole or in part because of New York venue provisions that

the Debtors intentionally and routinely ignore. *See* First Day Decl. ¶¶ 1-4, Opp. at p. 2. Between January 18 and February 15, 2022, Debtor Prehired Recruiting, LLC filed nearly **300** debt collection lawsuits in Delaware state court. The Debtors should not be permitted to now claim that New York venue provisions in those agreements, which they disregarded at the time, somehow entitle them to venue these Chapter 11 Cases in the Southern District of New York. This is especially true since, according to the First Day Declaration, the Debtors intend to resume their collection activities "in the members' respective state courts." First Day Decl. at ¶ 127.

22. Moreover, the Debtors are currently and actively *opposing* an attempt by New Epona, Inc. (d/b/a Blair) to transfer litigation to New York that Debtor Prehired, LLC filed against Blair in California state court. *See* **Exhibit A**. The Debtors' opposition to transferring a case to New York that they themselves filed in California severely undercuts their argument in this case that transferring these Chapter 11 Cases out of New York would prejudice the Debtors, be administratively inefficient, or harm the Debtors' estates or creditors. *See* First Day Decl. at ¶ 1-2.

D. If venue is improper in this District, the Chapter 11 Cases should be transferred to the District of Delaware.

23. If the Court finds that venue is improper in this District, it must transfer the Chapter 11 Cases to an appropriate District or dismiss them altogether. 28 U.S.C. § 1406. *See also In re Houghton Mifflin Harcourt Pub. Co.*, 474 B.R. 122, 124 (Bankr. S.D.N.Y. 2012) ("Once a § 1406 motion has been filed, § 1406 and its related caselaw leave the Court with no discretion."); *U.S. Trustee v. Sorrells (In re Sorrells)*, 218 B.R. 580, 590 (B.A.P 10th Cir. 1998) (finding reversable error where Bankruptcy Court retained jurisdiction over an improperly venued Chapter 7 case for the convenience of the parties).

24. Neither the State nor the Debtors have identified any Districts, other than the District of Delaware and the Middle District of Florida, where the Chapter 11 Cases could be

transferred. The Debtors do not contend in the Opposition that venue would be improper in the District of Delaware, nor do they suggest that the Middle District of Florida would be a more convenient or appropriate venue for these Chapter 11 Cases as compared to the District of Delaware.

25. The Debtors' opposition to transferring these Chapter 11 Cases to Delaware is premised on strawman argumentation. In Section III.B of the Opposition, the Debtors include quoted language (with no citation) that purports to be the standard upon which the State's Transfer Motion should be judged. It appears, but is not at all clear, that the Debtors intended to cite to Rule 1014(a)(1). For the avoidance of doubt, the State is not relying on Rule 1014(a)(1) or 28 U.S.C. § 1412, and is not requesting that the Court "disturb" the Debtors' choice of an appropriate venue in favor of an equally-appropriate District that would be more convenient for the State. *See* Opp. at p. 6. At bottom, the State's position is simple: because venue is not proper in the Southern District of New York, the Chapter 11 Cases must be transferred to another District when venue is proper. Under the facts of this case, the most convenient District where venue would be proper is the District of Delaware. ***The State is not requesting that the Court transfer venue to Delaware if it finds that venue properly lies in this District.***

26. The Debtors suggest that transferring the Chapter 11 Cases to Delaware "when 44 other states (and the District of Columbia) are involved, would arguably be inconvenient for everyone but the movant State of Delaware." Opp. at p. 7. But the same could be said of *any* chosen venue for the Chapter 11 Cases, including this District.

27. Assuming that venue is improper in this District, the proper question before the Court is not whether the District of Delaware would provide a more convenient and efficient venue than the Southern District of New York, but whether the District of Delaware would be a more

convenient and efficient venue than the Middle District of Florida. For the unrebutted reasons set forth in the Transfer Motion, the State respectfully submits that the District of Delaware would be the most efficient and convenient District where venue of the Chapter 11 Cases would be proper.

Dated: October 21, 2022

/s/ Katherine M. Devanney
Katherine M. Devanney, Esq. (admitted *pro hac vice*)
Deputy Attorney General
Delaware Department of Justice
820 N. French St., Floor 5
Wilmington, DE 19801
302-683-8812

Attorney for the State of Delaware

Exhibit A-1

(Notice of Motion and Motion to Dismiss or Stay for Inconvenient Forum)

Thomas F. Burke (*Pro Hac Vice* pending)
BurkeT@ballardspahr.com
Peng Shao (SBN 319624)
ShaoP@ballardspahr.com
BALLARD SPAHR LLP
2029 Century Park East, Suite 1400
Los Angeles, CA 90067-2915
Telephone: 424.204.4400
Facsimile: 424.204.4350

Attorneys for Defendant
NEW EPONA, INC., d/b/a BLAIR

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

PREHIRED, LLC

Plaintiff,

v.

NEW EPONA, INC. D/B/A BLAIR

Defendant.

CASE NO. CGC-22-600833

NOTICE OF MOTION AND MOTION TO DISMISS OR STAY FOR INCONVENIENT FORUM

[Memorandum of Points and Authorities; Declaration of David J. Hall; and Exhibit 1 submitted herewith]

Date: October 18, 2022
Time: 9:30 a.m.
Dept.: 302

Date Action Filed: July 21, 2022
Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 18, 2022, at 9:30 a.m., or as soon thereafter as the matter may be heard in Department 302 of this court located at 400 McAllister St., San Francisco, CA 94102-4514, Defendant New Epona, Inc., d/b/a Blair ("Defendant"), by and through its undersigned counsel of record, will and hereby does move to dismiss or stay the above-captioned action for inconvenient forum. (Code Civ. Proc. §§ 410.30, 418.10.)

This Motion is grounded on the fact that New York, not California, is the proper forum for this action because the contract in dispute provides for the application of New York law, Defendant's headquarters are in New York, and all of the evidence and witnesses are located in New York. This Motion is based upon Code of Civil Procedure §§ 410.30 and 418.10, this Notice of Motion, the attached Memorandum of Points and Authorities, the Declaration of David J. Hall, ESQ., the pleadings and other papers filed in this action, and such other evidence and oral argument as the Court may permit.

Respectfully submitted,

DATED: September 16, 2022

BALLARD SPAHR LLP

Thomas F. Burke (*Pro Hac Vice* pending)
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
Telephone: 215.864.8463
Facsimile: 215.864.8999

Peng Shao
2029 Century Park East, Suite 1400
Los Angeles, CA 90067-2915
Telephone: 424.204.4400
Facsimile: 424.204.4350

BY: */s/ Peng Shao*
Peng Shao

Attorneys for Defendant
New Epona, Inc., d/b/a Blair

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, California 90067-2915

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, California 90067-2915

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Plaintiff Prehired LLC is a Delaware limited liability company that claims an alleged breach of contract by defendant New Epona, d/b/a Blair, a Delaware corporation headquartered in New York. The contract at issue provides for the application of New York law to an ostensible purchase obligation relating to "income share agreements," which are intangible goods with no physical location. Prehired alleges three causes of action, none of which arise under California law: two claims for Breach of Contract, and one claim for Breach of Duty of Good Faith and Fair Dealing. (FAC, at 12-18.) Because this matter has no connection to California and a strong connection to New York, Prehired's First Amended Complaint (FAC) should be dismissed for inconvenient forum pursuant to Code Civ. Proc. §§ 410.30, 418.10.

A motion for inconvenient forum should be granted where (1) a suitable alternative forum exists, and (2) the balance of private-interest and public-interest factors weigh in favor of dismissal. Here, there is no question that New York state courts provide a suitable alternative forum. Further, the private-interest and public-interest factors weigh heavily in favor of this dispute—which has no connection to California at all—being heard in New York.

With respect to the private-interest factors, all parties to the action reside outside of California: Prehired and Blair are both Delaware corporations (FAC, at 1); Prehired maintains a Delaware address (*id.*); and Blair is headquartered in New York (Hall Decl. ¶ 4). Further, the subject contract provides for the application of New York law (FAC, Ex. 1, at 13), not California law. Discovery and trial in New York would be less costly and more convenient for all parties because the relevant witnesses and documentary evidence are likely to be in or more much proximate to New York. With respect to the public-interest factors, New York has a strong interest in resolving claims against its own residents, whereas California has no interest in resolving allegations of out-of-state misconduct between non-Californians. Indeed, the one and only allegation in the FAC tying this dispute to California is Prehired's statement that Blair "is a foreign corporation authorized by the California Secretary of State to do business in the State of

California," (FAC, at ¶ 2), which provides no basis for any measure of private or public interest in having this dispute resolved in California.

Because this matter has no connection to California and would be inconvenient for the parties to litigate here, this Court should decline jurisdiction over the FAC and dismiss this action for re-filing in New York.

II. THE COURT SHOULD DISMISS THIS ACTION ON GROUNDS OF INCONVENIENT FORUM.

A. APPLICABLE LAW.

The doctrine of forum non conveniens has long been applied and codified in California. Under California's Code of Civil Procedure section 410.30(a), a party may move to dismiss or stay an action on the grounds that "in the interest of substantial justice an action should be heard in a forum outside this state . . . ." (Code Civ. Proc. § 410.30(a); *see also* § 418.10(a)(2) (providing that a party may move the court to "stay or dismiss the action on the grounds of inconvenient forum.").) These two statutory provisions codify the equitable doctrine of forum non conveniens. (*Stangvik v. Shiley Inc.* (1991) 54 Cal.3d 744, 757 (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 260–61 (1981).)

Under this doctrine, a court may invoke its "discretionary power … to decline to exercise the jurisdiction [that] it [otherwise] has over a transitory cause of action when it believes that the action may be more appropriately and justly tried elsewhere." (*Id.* at 751 (citations omitted).) Indeed, "[w]hen a court [ ] finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court **shall stay or dismiss** the action in whole or in part on any conditions that may be just." (Code Civ. Proc. § 410.30(a), emphasis added.)

A trial court assessing a motion for inconvenient forum considers two steps. First, the court must decide whether a suitable alternative forum exists. An alternative forum is suitable if (1) the defendant is subject to jurisdiction there, and (2) the plaintiff's causes of action would not be barred by the statute of limitations. (*Id.* at 752.) In other words, an alternative forum is suitable where an action "can be brought, although not necessarily won." (*Chong v. Superior*

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, California 90067-2915

Court (1997) 38 Cal.App.4th 1032, 1036–37.)

Second, the court must consider "the private interests of the parties and the public interest in keeping the case in California." (*NFL v. Fireman's Fund Ins. Co.* (2013) 216 Cal.App.4th 902, 917.) Private-interest factors include those "that make trial and the enforceability of the ensuing judgment expeditious and relatively inexpensive, such as the ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses." (*Stangvik*, 54 Cal.3d at 751.) They also include the residence of the parties. (*Id.* at 754–55.) Public-interest factors include "avoidance of overburdening local courts with congested calendars, protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has little concern, and weighing the competing interests of California and the alternate jurisdiction in the litigation." (*Id.* at 751.)

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, California 90067-2915

B. NEW YORK IS A SUITABLE ALTERNATIVE FORUM.

The first requirement for dismissal—the existence of a suitable alternative forum—is easily met. Blair is subject to general jurisdiction in New York because its corporate headquarters are located there and Blair conducts the majority of its business from New York. (Hall Decl. ¶¶ 4-8.) Accordingly, there is no question that Blair "can be subject to jurisdiction" in New York. (*Stangvik*, 54 Cal.3d at 752.)

Further, Prehired's causes of action would be subject to a six-year statute of limitations in New York, which is actually longer than California's four-year statute. (*Compare* Code Civ. Pro. § 337 *with* N.Y. C.P.L.R. § 213.) To the extent Prehired's claims fall within the statute of limitations in California, they would likewise be timely in New York. As a result, New York provides a suitable alternative forum.

C. PRIVATE-INTEREST FACTORS FAVOR DISMISSAL.

All relevant private interests favor litigation of this matter in New York. This includes the parties' places of residence and the relative ease of access to witnesses and evidence. (*See Stangvik*, 54 Cal.3d at 751–55.)

First, although California courts often show some deference to the plaintiff's choice of

forum, that deference does not apply when the plaintiff is not a resident of California. Under those circumstances, "the plaintiff's choice of forum is much less reasonable and is not entitled to the same preference as a resident of the state where the action is filed." (*Fox Factory, Inc. v. Superior Court* (2017) 11 Cal.App.5th 197, 206 (quoting *Stangvik*, 54 Cal.3d at 755).) "Defendant's residence is also a factor to be considered in the balance of convenience." (*Stangvik*, 54 Cal.3d at 755.) When the complaint alleges causes of action "between non-California claimants against out-of-state defendants" over out-of-state activities "about which California has no interest whatsoever, . . . ***it would be an abuse of discretion*** for a trial court to do anything other than dismiss the actions." (*Baltimore Football Club, Inc. v. Superior Court* (1985) 171 Cal.App.3d 352, 364–65 (emphasis added).)

Here, Prehired concedes it is "a limited liability company formed under the laws of the State of Delaware," with a Delaware address. (FAC, ¶ 1.) In other public litigation, Prehired has confirmed that its only member is its CEO Joshua Jordan, who signed the contract at issue (*see* FAC, Ex. 1) and is a resident of South Carolina. *See Reid v. Prehired*, ECF 28, Answer, at ¶ 18, and Third-Party Complaint, at ¶ 1 (attached as Exhibit 1).[1] Accordingly, Prehired is an out-of-state resident and its choice of jurisdiction is entitled to *no* deference. (*Stangvik*, 54 Cal.3d at 755.)

Second, it would be far more efficient for the Parties to litigate this dispute in New York. All known witnesses and documents relating to this action are in or much more proximate to New York than to California, which would make litigation much more convenient in New York. (*Stangvik*, 54 Cal.3d at 756–59 (affirming the lower court's holding that "because virtually all witnesses and documents relating to the [case] are located in Scandinavia, it is more convenient to try the actions there.").) Blair, in particular, is a Delaware corporation headquartered in New York, and current employees with knowledge of the matter are based there or in jurisdictions that

[1] This Court may take judicial notice of admissions by Prehired in other publicly filed documents. (Cal. Evid. Code § 452(d) ("Judicial notice may be taken of" . . . "[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.").)

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, California 90067-2915

are more proximate to New York than to California (Germany, Pennsylvania, and Florida). (Hall Decl. ¶¶ 4, 9.) Likewise, all documentary evidence in Blair's possession relating to Prehired's allegations is located in New York. (*Id.* at ¶ 10.) Consequently, New York is "presumptively a convenient forum." (*Id.; see also Hahn v. Diaz-Barba* (2011) 194 Cal.App.4th 1177, 1198 (holding that because "the cost of obtaining discovery and testimony [in the alternative forum] will be reduced," dismissal for forum non conveniens was appropriate).)

Third, the parties elected to have any disputes under the contract resolved under New York law. Specifically, the contract provides:

> This Agreement shall be deemed entered into with and shall be governed by and interpreted in accordance with the laws of the State of New York (including New York General Obligations Law Sections 5-1401 and 5-1402, but otherwise, without regard to the conflicts of law principles thereof).

(FAC, Ex. 1, at ¶ 11(b).) California courts have recognized that the courts of a particular state are "more adequately equipped to determine the rights of the parties" where that state's law will govern the dispute. (*Guess? Retail, Inc. v. Macerich Co.*, 2021 Cal. Super. LEXIS 6197, *23; *see also Clark's Fork Reclamation Dist. No. 2069 v. Johns* (1968) 259 Cal. App. 2d 366, 369 (restraint by California court advisable where issues turn wholly on questions of non-California law).) Because this dispute will involve exclusively the application of New York law, the parties have an interest in having the dispute resolved in New York.

D. PUBLIC-INTEREST FACTORS ALSO FAVOR DISMISSAL.

The relevant public-interest factors include (i) weighing the competing interests of California and the alternate jurisdiction in the litigation, (ii) avoidance of overburdening local courts with congested calendars, and (iii) protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has little concern. (*Stangvik*, 54 Cal.3d 744, 751, 758.) Here, these factors weigh in favor of litigating in New York.

First, when "weighing the competing ties of California and [New York]," New York clearly has a stronger interest because this action involves no California-based parties, no

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, California 90067-2915

conduct in California, no application of California law, and no alleged harm to California residents. (*Id.* at 751; *Hahn*, 194 Cal.App.4th at 1198.) Blair is headquartered in New York, and "inasmuch as defendants are not California corporations, California has little interest in keeping the litigation in this state to deter future wrongful conduct." (*Guimei v. Gen. Elec. Co.*, (2009) 172 Cal. App. 4th 689, 703.) Because California has essentially *no* ties to this litigation, which would involve application of New York law to the conduct of a New York-based defendant, New York has a far stronger interest than California.

Second, because California has little to no interest in this action, keeping the lawsuit here would needlessly add to the dockets of the already-overburdened California courts. (*NFL*, 216 Cal.App.4th at 917.) "[P]reventing court congestion resulting from the trial of foreign causes of action is an important factor in the forum non conveniens analysis." (*Stangvik*, 54 Cal.3d at 758.)

Third, dismissing this action would "protec[t] the interests of potential [California] jurors so that they are not called upon to decide cases in which the local community has little concern." (*Fox Factory*, 11 Cal.App.5th at 202–03.) California courts have recognized that it would be "unduly burdensome for California residents to be expected to serve as jurors on a case having . . . little to do with California." (*Morris v. AGFA Corp*. (2006) 144 Cal.App.4th 1452, 1467.) New York jurors would be far better suited to resolving this case.

Viewed in their totality, these public interest factors weigh strongly in favor of dismissing this case for inconvenient forum. New York courts are available and well-equipped to address the relief sought by Prehired in its First Amended Complaint, and all private- and public-interest factors demonstrate that New York is a far more appropriate and convenient forum than California.

III. CONCLUSION.

The Court should dismiss this action on the ground of forum non conveniens under California Code of Civil Procedure sections 410.30 and 418.10. In the alternative, this Court should stay the action pending resolution of a parallel action in New York.

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, California 90067-2915

Respectfully submitted,

DATED: September 16, 2022

BALLARD SPAHR LLP

Thomas F. Burke (*Pro Hac Vice* pending)
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
Telephone: 215.864.8463
Facsimile: 215.864.8999

Peng Shao
2029 Century Park East, Suite 1400
Los Angeles, CA 90067-2915
Telephone: 424.204.4400
Facsimile: 424.204.4350

BY: */s/ Peng Shao*
Peng Shao

Attorneys for Defendant
New Epona, Inc., d/b/a Blair

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, California 90067-2915

DECLARATION OF DAVID J. HALL, ESQ.

I, David J. Hall, Esq., hereby declare and state as follows:

1. I am an employee and the General Counsel of Defendant New Epona, Inc., d/b/a Blair ("Blair"), a Delaware corporation, with its corporate headquarters at 46 Howard Street, New York, NY 10013. I have read the First Amended Complaint (FAC) filed against Defendant in the instant action entitled *Prehired, LLC v. New Epona, Inc., d/b/a Blair*, San Francisco Superior Court, Case No. CGC-22-600833.

2. I am over the age of 18. I have personal knowledge of the matters set forth herein, and if called to testify, I would competently testify thereto. I make this declaration in support of the attached Notice of Motion and Motion to Dismiss or Stay for Inconvenient Forum in this action.

3. Blair is a corporation organized and existing under the laws of the State of Delaware with a registered address of 2093 Philadelphia Pike #6174, Claymont, DE 19703.

4. Blair's corporate headquarters are located at 46 Howard Street, New York, NY 10013, and Blair conducts the majority of its business from New York.

5. Blair has no offices or bank accounts in California.

6. Blair has never owned offices or other real property in California and has not leased offices or other real property in California since 2020, which predates the facts and events described in the FAC.

7. Blair has never paid state income taxes or filed state tax returns in California.

8. All of Blair's corporate records are maintained in New York, not California.

9. All Blair employees with knowledge of the facts and events described in the FAC and other fact witnesses Blair would call in its defense live and work in New York or in other jurisdictions more proximate to New York than to California (Germany, Pennsylvania, and Florida).

10. All of the physical and documentary evidence related to this action in Blair's possession is located at Blair's headquarters in New York.

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, California 90067-2915

11. According to the FAC, Prehired's claims arise out of a contract between Prehired and Blair. This contract specifically provides for the application of New York law. None of the events Prehired claims to have been injured by took place in California.

12. All Blair employees who were involved in the negotiation and execution of the contract between Prehired and Blair that is described in the FAC lived and worked in New York and Germany at that time. No Blair employee lived or worked in California at that time.

13. I am not aware of Blair having had any interaction with Prehired in any regard in California, nor has Prehired alleged any such interaction in California.

14. I am authorized to acknowledge on behalf of Blair that it is subject to the personal jurisdiction of the courts in the State of New York with respect to the FAC filed in the instant action against Blair. Therefore, if a complaint for the same action against Blair was filed in a court in the State of New York, Blair would submit to personal jurisdiction in the New York court in connection with such an action in New York, and it would not contest personal jurisdiction over Blair in such an action in New York.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 16th day of September, 2022 at New York, New York.

David J. Hall

David J. Hall, Esq.

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, California 90067-2915

EXHIBIT 1

R. Omar Riojas, WSBA No. 35400
Goldfarb & Huck Roth Riojas, PLLC
925 Fourth Avenue, Suite 3950
Seattle, Washington 98104
Telephone: 206.492.7398
E-mail: riojas@goldfarb-huck.com

Thomas J. McCabe, admitted *pro hac vice*
Jon-Jorge Aras, admitted *pro hac vice*
Jorge Marquez, admitted *pro hac vice*
Warren Law Group
14 Penn Plaza, 9th Floor
New York, New York 10122
Telephone: 866-954-7687
E-mail: tmccabe@warren.law
jj@warren.law
jmarquez@warren.law

Attorneys for Defendants Prehired, LLC and Joshua Jordan

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

ELAINA REID, individually and on behalf of all other similarly situated,

Plaintiff,

v.

PREHIRED, LLC, MERATAS, INC, and JOSHUA JORDAN,

Defendants.

PREHIRED, LLC,

Third-Party Plaintiff,

v.

ISA PLUS, LLC,

Third-Party Defendant.

NO. 2:22-cv-00072-TOR

DEFENDANTS PREHIRED, LLC, AND JOSHUA JORDAN'S

(1) ANSWER TO THE CLASS ACTION COMPLAINT, AND

(2) THIRD-PARTY COMPLAINT AGAINST ISA PLUS, LLC

Defendants Prehired, LLC ("Prehired") and Joshua Jordan ("Jordan") answer the Class Action Complaint filed by Elaina Reid ("Reid" or "Plaintiff") as follows:

I. NATURE OF THE CASE

1. Lack sufficient information to admit or deny the allegations of the first sentence of Paragraph 1 of the Complaint and, therefore, deny the allegations. Deny all other allegations in Paragraph 1.

2. Lack sufficient information to admit or deny the allegations in the first sentence of Paragraph 2, and therefore, deny the allegations. Deny all other allegations in Paragraph 2.

3. Lack sufficient information to admit or deny the allegations that Reid could not afford to enroll in Prehired's course. Admit all other allegations in Paragraph 3.

4. Paragraph 4 contains legal conclusions to which neither an admission nor denial is required. Defendants, however, specifically deny that their conduct was prohibited by Washington law.

5. Paragraph 5 contains conclusions of law to which neither an admission nor denial is required. Defendants, however, deny that they violated Washington law.

6. Paragraph 6 contains conclusions of law to which neither an admission nor denial is required. Defendants, however, deny that they engaged in "unfair business practice" in their dealings with Plaintiff, or otherwise violated Washington law.

7. Paragraph 7 contains conclusions of law to which neither an admission nor denial is required. Defendants, however, specifically deny that they violated Washington law.

8. Paragraph 8 contains conclusions of law to which neither an admission nor denial is require. Defendants, however, specifically deny that they violated Washington law.

9. Deny the allegations in the first sentence of Paragraph 9. Defendants admit that the ISA signed by Reid contains a choice of jurisdiction clause and a "governing law" clause but deny that these provisions were illegal under Washington law.

10. Deny the allegations in Paragraph 10.

11. Deny the allegations of Paragraph 11.

12. Deny the allegations of Paragraph 12.

13. On information and belief, admit that Plaintiff is seeking the relief described in Paragraph 13 but deny that Defendants violated Washington law or that Plaintiff is entitled to any recovery from Prehired.

II. JURISDICTION AND VENUE

14. Deny the allegations contained in the first sentence of Paragraph 14. Further deny that Plaintiff's claims against defendants exceed $75,000.

15. Deny that venue in the Eastern District of Washington is proper and that Reid executed the contracts described in Paragraph 15 in Washington.

III. THE PARTIES

16. Deny the allegations in the first sentence of Paragraph 16. The second sentence of Paragraph 16 contains legal conclusions to which no admission or denial is required.

17. Admit the allegations in the first sentence of Paragraph 17. Deny all other allegations contained therein.

18. Admit that Defendant Joshua Jordan is an individual residing in North Charleston, South Carolina. Deny all other allegations contained in Paragraph 18.

19. Lack sufficient information to admit or deny the allegations in Paragraph 19 and, therefore, deny the allegations.

20. Deny the allegations in Paragraph 20.

IV. BACKGROUND FACTS

21. Lack sufficient information to admit or deny the allegations of Paragraph 21 and, therefore, deny the allegations.

22. Deny the allegations in Paragraph 22.

23. Admit that the Attorney General for the State of Delaware has commenced in investigation regarding Prehired and that the Attorney General wrote the letter described in Paragraph 23. Deny all other allegations contained in Paragraph 23.

24. Admit the allegations in Paragraph 24.

25. Admits the allegations in the first sentence of Paragraph 25. Lack sufficient information to admit or deny all other allegations contained therein and, therefore, deny such allegations.

26. Lack sufficient information to admit or deny the allegations in the first sentence of Paragraph 26 and, therefore, deny such allegations. On information and belief admit the other allegations in Paragraph 26.

27. Deny the allegations in Paragraph 27.

28. Lack sufficient information to admit or deny the allegations in Paragraph 28 and, therefore, deny the allegations.

29. Lack sufficient information to admit or deny the allegations in Paragraph 29 and, therefore, deny the allegations.

30. On information and belief, admit the allegations of Paragraph 30.

31. On information and belief, admit the allegations of Paragraph 31.

32. Admit that Reid filled out an application to be admitted to Prehired's training program but lack sufficient information to admit or deny the other allegations in Paragraph 32 and, therefore, deny these allegations.

33. Lack sufficient information to admit or deny the allegations of Paragraph 33 and, therefore, deny the allegations.

34. Lack sufficient information to admit or deny the allegations of Paragraph 34 and, therefore, deny the allegations.

35. Lack sufficient information to admit or deny the allegations of Paragraph 35 and, therefore, deny the allegations.

36. On information and belief, admit the allegations in Paragraph 36.

37. On information and belief, admit the allegations in Paragraph 37.

38. On information and belief, admit the allegations in Paragraph 38.

39. On information and belief, admit the allegations in Paragraph 39.

40. Deny the allegations in Paragraph 40.

41. On information and belief, admits the allegations of Paragraph 41.

42. Admit the allegations of Paragraph 42.

43. Admit the allegations of Paragraph 43.

44. Admit the allegations of Paragraph 44.

45. Admit the allegations of Paragraph 45.

46. Paragraph 46 contains a legal conclusion to which no admission or denial is required.

47. On information and belief, admit the allegations of Paragraph 47.

48. On information and belief, admit the allegations of Paragraph 48.

49. Lack sufficient information to admit or deny the allegations of Paragraph 49 and, therefore, deny the allegations.

50. Lack sufficient information to admit or deny the allegations of Paragraph 50 and, therefore, deny the allegations.

51. Lack sufficient information to admit or deny the allegations of Paragraph 51 and, therefore, deny the allegations.

52. Lack sufficient information to admit or deny the allegations of Paragraph 52 and, therefore, deny the allegations.

53. Lack sufficient information to admit or deny the allegations of Paragraph 53 and, therefore, deny the allegations.

54. On information and belief, admit the allegations.

55. Lack sufficient information to admit or deny the allegations of Paragraph 55 and, therefore, deny the allegations.

56. Lack sufficient information to admit or deny the allegations of Paragraph 56 and, therefore, deny the allegations.

57. Lack sufficient information to admit or deny the allegations of Paragraph 57 and, therefore, deny the allegations.

58. Lack sufficient information to admit or deny the allegations of Paragraph 58 and, therefore, deny the allegations.

59. Lack sufficient information to admit or deny the allegations of Paragraph 59 and, therefore, deny the allegations.

60. Lack sufficient information to admit or deny the allegations of Paragraph 60 and, therefore, deny the allegations.

61. Lack sufficient information to admit or deny the allegations of Paragraph 61 and, therefore, deny the allegations.

62. Lack sufficient information to admit or deny the allegations of Paragraph 62 and, therefore, deny the allegations.

63. Lack sufficient information to admit or deny the allegations of Paragraph 63 and, therefore, deny the allegations.

64. Lack sufficient information to admit or deny the allegations of Paragraph 64 and, therefore, deny the allegations.

65. Lack sufficient information to admit or deny the allegations of Paragraph 65 and, therefore, deny the allegations.

66. On information and belief, deny the allegations of Paragraph 66.

V. CLASS ALLEGATIONS

67. Admit that Reid purports to bring this action on behalf of herself and the proposed Class described in Paragraph 67 but deny that Class certification in this case is proper.

68. Deny the allegations in the first sentence of Paragraph 68. Admit that Prehired has filed law suits in the State of Delaware but lacks sufficient information to admit or deny all other allegations contained in Paragraph 67 and, therefore, denies the allegations.

69. Deny the allegations of Paragraph 69.

70. Deny the allegations in the first sentence of Paragraph 70. Lack sufficient information to admit or deny the allegations of Paragraph 70.

71. Deny the allegations of Paragraph 71.

72. Deny the allegations of Paragraph 72.

73. Deny the allegations of Paragraph 73.

FIRST CLAIM FOR RELIEF

Per se violation of the Washington Consumer Protection Act

Wash. Rev. Code Section 19.86 et seq.

74. No admission or denial is required in response to Paragraph 74.

75. Paragraph 75 contains conclusions of law to which no admission or denial is required.

76. Paragraph 76 contains conclusions of law to which no admission or denial is required. Prehired, however, specifically denies that it was a "private vocational school" within the meaning of Washington law.

77. Paragraph 77 contains conclusions of law to which no admission or denial is required.

78. Paragraph 78 contains conclusions of law to which no admission or denial is required.

79. Paragraph 79 contains conclusions of law to which no admission or denial is required.

80. Paragraph 80 contains conclusions of law to which no admission or denial is required.

81. Deny the factual allegations in Paragraph 81. Paragraph 81 also contains conclusions of law to which no admission or denial is required.

82. Paragraph 82 contains conclusions of law to which no admission or denial is required.

83. Deny the allegations of Paragraph 83.

84. Deny the allegations of Paragraph 84.

85. Deny the allegations of Paragraph 85.

SECOND CLAIM FOR RELIEF

Violation of the Washington Consumer Protection Act-

Unfair or Deceptive Acts or Practices

86. No admission or denial is required in response to Paragraph 86.

87. Lack sufficient information to admit or deny the allegations of Paragraph 87 and, therefore, deny the allegations.

88. Deny the allegations of Paragraph 88.

89. Deny the allegations of Paragraph 89.

90. Deny the allegations of Paragraph 90.

91. Deny the allegations of Paragraph 91.

92. Deny the allegations of Paragraph 92.

93. Deny the allegations of Paragraph 93.

94. Deny the allegations of Paragraph 94.

95. Deny the allegations of Paragraph 95.

VI. PRAYER FOR RELIEF

96. Deny that Reid or any alleged class are entitled to the relief sought.

AFFIRMATIVE DEFENSES

97. Plaintiff's claims against Defendants are barred, in whole or in part, by the doctrine of unclean hands in that Plaintiffs' own actions have caused the damages alleged, if any.

98. Plaintiff's claims against Defendants are barred, in whole or in part, by the applicable statutes of limitation.

99. Plaintiff's claims against Defendants are barred, in whole or in part, by the doctrines of waiver and estoppel.

100. Plaintiff's claims against Defendants are barred, in whole or in part, by the doctrine of laches.

101. Plaintiff's claims against Defendants are barred because Plaintiff lacks standing to assert their claims.

102. Plaintiff is not entitled to recover the amount of damages alleged in the Complaint or any damages, due to Plaintiff's failure to take reasonable efforts to mitigate or minimize the damages that they have allegedly incurred.

103. Plaintiff has failed to satisfy the requirements of FED. R. CIV. P. 23 and this action is not appropriate for class certification or treatment.

104. Plaintiff's Complaint, and each cause of action alleged therein, fails to the extent that Plaintiff cannot allege a predominance of common questions of fact and law.

105. Plaintiff's Complaint, and each purported cause of action alleged therein, fails to the extent that Plaintiff cannot show a specific or reliable measure of damages owed to them and/or members of the alleged class.

106. Plaintiff's Complaint, and each purported cause of action alleged therein, fails to the extent that Plaintiff is not an adequate representative of the alleged class that she purports to represent. Defendants allege that Plaintiff do not have claims typical of the alleged class, if any, and that Plaintiff's interests are antagonistic to the alleged class they purport to represent. As such, the class action claims and allegations fail as a matter of law.

107. Plaintiff's claims against Defendants are barred, in whole or in part, by the fault of a non-party, namely ISA PLUS, LLC.

THIRD-PARTY COMPLAINT

Pursuant to Rule 14(a), Third-Party Plaintiff Prehired, LLC ("Prehired"), by and through their undersigned counsel, file this Third-Party Complaint against Third-Party Defendant ISA Plus, LLC, and states as follows:

PARTIES

1. Prehired, LLC is a limited liability company incorporated under the laws of Delaware. Joshua Jordan ("Jordan") is an individual who is a resident of South Carolina. Jordan is the sole member of Prehired.

2. On information and belief, ISA PLUS, LLC ("ISA Plus") is a

Delaware limited liability company that is the corporate successor to SELF Financial, a Delaware limited liability company. On information and belief, ISA Plus's sole member resides in California.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter under 28 U.S.C. § 1367(a).

4. In addition to this Court's pendent jurisdiction over this matter, this court would have jurisdiction under 28 U.S.C. § 1332 because the parties are diverse and the amount in controversy is in excess of $75,000.

5. Venue is appropriate in this District under 28 U.S.C. § 1391(b)(2) because the underlying action is pending in this District.

FACTUAL ALLEGATIONS

6. On January 7, 2020, Prehired entered into a Forward Purchase Agreement with SELF Financial, a Delaware limited liability company that became ISA PLUS, LLC ("ISA Plus"), a Delaware limited liability company.

7. ISA Plus is the successor to SELF Financial for purposes of SELF Financial's duties and obligations under the Forward Purchase Agreement.

8. The Forward Purchase Agreement provides, in pertinent part:

> a) Subject to the terms and conditions of this Agreement, on any Purchase Date, Seller shall sell, transfer, assign and otherwise convey to Purchaser, and Purchaser shall purchase and acquire from Seller, all of Seller's right, title and interest in the Receivables described on the Purchase Notices from time to time delivered by Seller to Purchaser in accordance herewith in respect of the proposed respective Purchase Dates therefor, in each case together with all future Collections with respect to and other proceeds of such Receivables received on or after the applicable Purchase Date (such Collections and proceeds, collectively, the "Related Assets")[.]
>
> d) It is the intention of the parties hereto that each Purchase of Assigned Rights made hereunder shall constitute a "true-sale" from Seller to

> Purchaser under applicable state law and Federal bankruptcy law, which sales are absolute and irrevocable and provide Purchaser with all indicia and rights of ownership of the Purchased Receivables and such Related Assets. Neither Seller nor Purchaser intends the transactions contemplated hereunder to be, or for any purpose to be characterized as, loans from Purchaser to Seller secured by such property.

Forward Purchase Agreement, §2(a), (d).

9. Pursuant to the Forward Purchase Agreement, ISA Plus acquired from Prehired the Purchased Receivables at issue in this litigation, and all of Prehired's right, title and interest in such Purchased Receivables.

10. Prehired's Forward Purchase Agreement with SELF Financial is a valid and legally binding contract under which Prehired performed all its duties, conditions, covenants, and promises to the extent required by applicable law.

11. Pursuant to the Forward Purchase Agreement, as the acquirer of all of Prehired's right, title, and interest in the Purchased Receivables, ISA Plus is liable, in whole or in part, for any damages claimed by Plaintiffs against Defendants Prehired and Jordan.

COUNT I: CONTRIBUTION

12. Prehired incorporates by reference the preceding allegations of this Third-Party Complaint as if fully set forth herein.

13. Third-Party Defendant ISA Plus, having acquired Prehired's interests in any and all Purchased Receivables under the Forward Purchase Agreement, is liable to Plaintiff, in whole or in part, to the extent of any damages for which Defendant Prehired is liable to Plaintiff.

COUNT II: DECLARATORY JUDGMENT

14. Prehired incorporates by reference the preceding allegations of this Third-Party Complaint as if fully set forth herein.

15. An actual controversy exists between Prehired and Third-Party

Defendant ISA Plus regarding any contractual and legal liabilities and responsibilities associated with the Forward Purchase Agreement and the parties' transactions with respect to the Purchased Receivables.

16. Prehired is entitled to a judgment declaring the contractual and legal liabilities and responsibilities of ISA Plus with respect to the allegations of Plaintiff as to the Purchased Receivables.

PRAYER FOR RELIEF

WHEREFORE, Third-Party Plaintiff Prehired prays for judgment as follows:

(a) Finding that Third-Party Defendant ISA Plus is liable for contribution as to any judgment obtained by Plaintiff against Prehired with respect to any and all Purchased Receivables under the Forward Purchase Agreement;

(b) Declaring that Third-Party Defendant ISA Plus is liable to Prehired, in whole or in part, for any amount of damages that may be found against Prehired in favor of Plaintiff, together with costs.

Defendants Prehired and Jordan demand a trial by jury of all issues in this action.

WARREN LAW GROUP
14 Penn Plaza, 9th Floor
New York, New York 10122

RESPECTFULLY SUBMITTED this 8th day of August, 2022.

WARREN LAW GROUP

/s/ Thomas J. McCabe
Thomas J. McCabe, admitted *pro hac vice*
(tmccabe@warren.law)

/s/ Jon-Jorge Aras
Jon-Jorge Aras, admitted *pro hac vice*
(jj@warren.law)

/s/ Jorge Marquez
Jorge Marquez, admitted *pro hac vice*
(jmarquez@warren.law)

14 Penn Plaza, 9th Floor
New York, New York 10122
Telephone: 866-954-7687

GOLDFARB & HUCK ROTH RIOJAS, PLLC

/s/ R. Omar Riojas
R. Omar Riojas, WSBA No. 35400
(riojas@goldfarb-huck.com)

925 Fourth Avenue, Suite 3950
Seattle, Washington 98104
Telephone: 206.492.7398

Attorneys for Defendants Prehired, LLC and Joshua Jordan

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically with the Clerk of the Court using the CM/ECF system on August 8, 2022 and was served via the Court's CM/ECF system on all counsel of record.

DATED this 8th day of August, 2022.

/s/ Thomas J. McCabe
Thomas J. McCabe, admitted *pro hac vice*

GOLDFARB & HUCK
ROTH RIOJAS, PLLC
925 Fourth Avenue, Suite 3950
Seattle, Washington 98104
Main: 206.452.0260

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is **BALLARD SPAHR LLP**, 2029 Century Park East, Suite 1400, Los Angeles, CA 90067-2915. On September 16, 2022, I served the within document(s):

NOTICE OF MOTION AND MOTION TO DISMISS OR STAY

FOR INCONVENIENT FORUM

☑ **BY MAIL**: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

☐ **BY OVERNIGHT MAIL**: by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

☐ **BY PERSONAL DELIVERY**: by causing personal delivery by First Legal Network of the document(s) listed above to the person(s) at the address(es) set forth below.

☑ **BY E-MAIL**: by attaching an electronic copy of the document(s) listed above to the e-mail address listed below.

John J. Keenan Warren Law Group 445 S. Figueroa St. Los Angeles, CA 90071 T: 866.954.7687/866-335-6823 Email: johnkeenan@warren.law	*Attorneys for Plaintiff, PREHIRED, LLC*

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, California 90067-2915

I declare under the penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 16, 2022, at Los Angeles, California.

Shari L. Green

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, California 90067-2915

Exhibit A-2

(Memorandum of Points and Authorities in Opposition to Defendant's Motion to Dismiss or Stay for Inconvenient Forum)

John J. Keenan SBN 242487
Warren Law Group
445 S. Figueroa St.
Los Angeles, CA 90071
866-954-7687 | 866-335-6823
johnkeenan@warren.law

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

PREHIRED, LLC, Plaintiff, v. NEW EPONA, INC. D/B/A BLAIR, Defendant.	Case No.: CGC-22- 600833 **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS OR STAY FOR INCONVENIENT FORUM.** **[ORAL ARGUMENT REQUESTED]**

INTRODUCTION

This is a civil action for breach of a contract between the parties. Plaintiff commenced this action by the filing of a summons and complaint. Defendant then filed this motion to dismiss based on forum non conveniens.

BACKGROUND

Plaintiff is in the business of providing a service mentoring individuals to obtain jobs in the software sales industry. The business model being employed by Prehired LLC did not require the persons in the program to pay tuition in advance.

Instead, the persons taking the program would agree to pay a percentage of their future income, but only after they had obtained a job with a specific threshold salary. These contracts between prehired and the trainee are referred to in the industry as Income Service Agreements ("ISA."). Typically, the ISAs may be sold to a third-party company which monitors the income of the party and services the ISA, collecting the amounts when they become due from the parties to the ISAs. In the instant case, the Defendant purchased 141 ISAs for which the defendant had the opportunity to perform due diligence to be certain that the parties to the ISA met the Defendant's standards. After confirming that they met the standards, the Defendant allowed the approved ISAs to be uploaded to their platform. The terms of the contract provide that upon uploading to their platform, the Defendant agrees and commits to purchase the ISAs. Defendant New Epona, Inc., failed to pay for the 141 ISAs which they had approved and uploaded to their platform. Plaintiff sued in breach of contract. Defendant has now filed a motion to dismiss based upon forum non conveniens. The motion is a frivolous one since the Defendant has (1) previously advertised that their headquarters are in San Francisco, California and, (2) the Defendant previously applied to the California Secretary of State and became admitted to do business in the state of California.

ARGUMENT

I.There is General Jurisdiction over the Defendant in California

Code of Civil Procedure section 410.10 provides that "a court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States. *E.I.C., Inc. v. Bank of Va.,* 108 Cal. App. 3d 148, 150, 166 Cal. Rptr. 317, 318 (1980).

When a nonresident's activities in the forum state are substantial, continuous, and systematic, the state may assert general personal jurisdiction over him for all causes of action. In such instances no connection between the pleaded cause of action and his business activities in the state is required. *E.I.C., Inc. v. Bank of Va., ibid.*

In the instant case the Defendant has (1) publicly represented that its headquarters are in San Francisco, California; (2) made application to the California Secretary of State, and became authorized to do business in the state of California. (Keenan Declaration). Defendant represented on its website that Blair has offices in three locations, San Francisco, California, New York, and Berlin, Germany. The website stated that San Francisco is the headquarters for Blair. The website page stating these facts was still publicly available two days after the motion to dismiss was filed by the Defendant. The Defendant has subsequently taken down that specific web page in an effort to mislead the court as to the facts

surrounding the Defendant's activities in California (Keenan Declaration). These facts create the minimum contacts required under the applicable case law so that the exercise of jurisdiction over the Defendant in California comports with concepts of fair play and substantial justice.

Under the minimum contacts test, "an essential criterion in all cases is whether the 'quality and nature' of the defendant's activity is such that it is 'reasonable' and 'fair' to require him to conduct his defense in that State." *Kulko v. California Superior Court* (1978) 436 U.S. 84, 92 [56 L. Ed. 2d 132, 98 S. Ct. 1690], quoting Internat. Shoe, supra, 326 U.S. at pp. 316-317, 319 [66 S. Ct. at pp. 158, 159-160].)

A state may exercise personal jurisdiction over a nonresident of that state if the defendant has "sufficient 'minimum contacts' with the forum such that 'maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" DVI, Inc. v. Superior Court, 104 Cal. App. 4th 1080, 1090, 128 Cal. Rptr. 2d 683, 689 (2002) (quoting *Internat. Shoe Co. v. Washington* (1945) 326 U.S. 310, 316 (90 L. Ed. 95, 66 S. Ct. 154)). The necessary substantial connection required to find minimum contacts between the defendant and the forum state "must come about by *an action of the defendant purposefully directed toward the forum State*." DVI, Inc. v. Superior Court, 104 Cal. App. 4th

1080, 1090, 128 Cal. Rptr. 2d 683, 689 (2002) (quoting Asahi Metal Indus. Co. v. Superior Court of Cal., 480 U.S. 102, 113, 107 S. Ct. 1026, 1032 (1987)).

Personal jurisdiction may be general or specific. Vons Cos., Inc. v. Seabest Foods, Inc., 14 Cal. 4th 434, 445, 58 Cal. Rptr. 2d 899, 905, 926 P.2d 1085, 1091 (1996). If a nonresident defendant's contacts with the forum state are "substantial . . . continuous and systematic," the nonresident defendant will be subject to general jurisdiction. Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, 445, 72 S. Ct. 413, 418 (1952). When there is general jurisdiction, the cause of action does not need to be related to the defendant's contacts. DVI, Inc., 104 Cal. App. at 1091 (2002).

Whether a defendant is subject to personal jurisdiction is subject to de novo review when no evidence of jurisdictional facts are in dispute. DVI, Inc. v. Superior Court, 104 Cal. App. 4th 1080, 1091, 128 Cal. Rptr. 2d 683, 690 (2002). "When evidence of jurisdiction is in dispute, the trial court's determination of factual issues is reviewed for substantial evidence." Id.

II.The Defendant is Estopped From Denying its Previous Statements Concerning the Headquarters of the Company being Located in San Francisco.

The rule of law is clear, that, where one by his words or conduct willfully causes another to believe the existence of a certain state of things, and induces him to act

on that belief, so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time. The vital principle is that he who by his language or conduct leads another to do what he would not otherwise have done shall not subject such person to loss or injury by disappointing the expectations upon which he acted. Such a change of position is sternly forbidden. It involves fraud and falsehood, and the law abhors both. *Long Beach v. Mansell*, 3 Cal. 3d 462, 467, 91 Cal. Rptr. 23, 26, 476 P.2d 423, 426 (1970).

Long established in the judicial decisions of this state, the doctrine was perhaps most aptly expressed by this court in *Seymour* v. *Oelrichs* (1909) 156 Cal. 782 [106 P. 88], where, quoting from an early decision of the United States Supreme Court, we stated: "'The vital principle is that he who by his language or conduct leads another to do what he would not otherwise have done shall not subject such person to loss or injury by disappointing the expectations upon which he acted. Such a change of position is sternly forbidden. It involves fraud and falsehood, and the law abhors both.'" *Long Beach v. Mansell*, ibid.

Plaintiff would not have filed this action in California but for the statements of Blair that (1) its headquarters are in San Francisco, California; and (2) New Epona, Inc. purposefully became admitted to do business in the State of California

and therefore availed itself of the protections of California law. Defendant advertised on its website that its headquarters are in San Francisco. Additionally, Defendant on its LinkedIn page gives the address of its California office, an office which Defendants general counsel declares under penalty of perjury does not exist. Plaintiff relied on those statements in filing this lawsuit and the Defendant cannot now retreat from those statements and representations.

III. The Defendant is not authorized to do business in New York and is not subject to Jurisdiction in New York.

New Epona, Inc. d/b/a Blair is not authorized to do business and does not have the minimum contacts to create jurisdiction over the Defendant in New York State. There is no more in personam jurisdiction in New York than there is in Berlin, Germany, their third office. It is clear that the minimum contacts necessary for jurisdiction in California exist from a factual basis. Defendant availed itself of the advantages of California law and cannot now be allowed to deny that it is subject to general jurisdiction in California.

CONCLUSION

Defendant's motion to dismiss based on forum non conveniens is a frivolous motion. Defendant has held itself out as having its headquarters in San Francisco,

California. Additionally, the Defendant took the necessary steps to become admitted to do business in California and in fact did become admitted to do business in California. Defendant, after filing this motion took down the web page in which it advertised that its headquarters were in San Francisco. Plaintiff is entitled to rely on Defendant's statements on its website. The Court should dismiss the motion.

Respectfully submitted this 9th day of October, 2022.

John Keenan, Esq.
(johnkeenan@warren.law)

Exhibit A-3

(Declaration of John J. Keenan, Esq. in Opposition to Defendant's Motion to Dismiss or Stay for Inconvenient Motion)

John J. Keenan (SBN 242487)
Warren Law Group
445 S. Figueroa St.
Los Angeles, CA 90071
866-954-7687 | 866-335-6823
john@warren.law

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

PREHIRED, LLC Plaintiff, v. NEW EPONA, INC. D/B/A BLAIR Defendant	Case No.: CGC-22-600833 DECLARATION OF JOHN J. KEENAN, ESQ. IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS OR STAY FOR INCONVENIENT FORUM

I, John J. Keenan, Esq. declare under penalty of perjury the following statements:

1. I am an attorney at law admitted to practice before the courts of the state of California.
2. I am counsel of record for the Plaintiff, Prehired, LLC.
3. I am over the age of 18. I have personal knowledge of the matters set forth herein, and if called to testify, I would competently testify thereto.
4. I make this declaration in opposition to the motion to dismiss for forum non conveniens filed by the defendant.

5. Defendant's motion is frivolous and the statement of Dave Hall submitted in support of the motion contains inaccuracies and is in fact, misleading.
6. I drafted and filed this civil action.
7. Before filing this civil action. I made investigations of the facts surrounding the location and headquarters of the defendant New Epona, Inc., d/b/a Blair.
8. The website of Blair stated just before filing of the instant matter that the Defendant has three offices, one in San Francisco, one in New York and another office in Berlin.
9. It further stated that the San Francisco office is the headquarters of Blair.
10. Additionally, New Epona, Inc. d/b/a Blair was authorized to do business in California on May 18, 2021.
11. Upon information and belief, Blair regularly does business in the State of California.
12. These facts in concert are minimum contacts under the case law sufficient to create jurisdiction over New Epona, d/b/a Blair in California.
13. Forum non conveniens has no application in the instant matter.
14. The issue is whether Blair is subject to general jurisdiction in California.

15. Because the company both represented that their headquarters is in California and because they are authorized to do business in California there is jurisdiction over the defendant, there.

16. Further, Plaintiff is entitled to rely upon the public statements of New Epona, Inc., that their headquarters is in California, and the company is estopped from denying their previous statements.

17. Notably, Mr. Hall's declaration implies that New Epona, Inc. had offices and leased space in California before 2020.

18. I am assuming that their position is that they previously had headquarters in San Francisco, but he has omitted that from his declaration.

19. I accessed the Blair website two days after defendant's motion was filed and the webpage still stated that Blair's headquarters is in San Francisco.

20. That webpage has since been taken down in an attempt to mislead the Court.

21. Notably, Blair's LinkedIn page still lists San Francisco as their address.

22. One other critical fact is the claim that New York is the location of Blair's headquarters.

23. In addition to being a California lawyer I am admitted to practice in New York State and have practiced there on a regular basis for approximately 23 years.

24. In response to the claim that Blair has it headquarters in New York I made a diligent search of the New York Secretary of State website.

25. New Epona, Inc.d/b/a Blair is not authorized to do business in the State of New York and has never been authorized to conduct business, there.

26. There is no jurisdiction over New Epona, Inc. d/b/a Blair in New York State.

27. The contract between the parties contains no choice of venue provision.

28. If the Defendant had wanted to have the litigation venued in New York it could have bargained for a venue provision in the contract between the parties. It did not do so.

29. However, there is a choice of law provision in the contract.

30. It is not in the least unusual for commercial contracts to contain such choice of law clauses and it has no bearing at all as to where a matter is venued.

31. I am currently litigating other cases in California with choice of law provisions for other than California law.

32. I have regularly encountered this situation throughout my career practicing in New York, California, and Canada.

33. Because there is general jurisdiction over New Epona, Inc., d/b/a Blair in California, the Defendant's frivolous motion must be denied.

Dated the 8th day of October, 2022.

John J. Keenan, Esq.

Exhibit A-4

(Reply to Plaintiff's Untimely Opposition to Defendant's Motion to Dismiss or Stay for Inconvenient Forum)

Thomas F. Burke (admitted *pro hac vice*)
BurkeT@ballardspahr.com
Peng Shao (SBN 319624)
ShaoP@ballardspahr.com
BALLARD SPAHR LLP
2029 Century Park East, Suite 1400
Los Angeles, CA 90067-2915
Telephone: 424.204.4400
Facsimile: 424.204.4350

Attorneys for Defendant
NEW EPONA, INC., d/b/a BLAIR

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

PREHIRED, LLC

Plaintiff,

v.

NEW EPONA, INC. D/B/A BLAIR

Defendant.

CASE NO. CGC-22-600833

REPLY TO PLAINTIFF'S UNTIMELY OPPOSITION TO DEFENDANT'S MOTION TO DISMISS OR STAY FOR INCONVENIENT FORUM

Hearing Date:	October 18, 2022
Time:	9:30 AM
Dept.:	302
Date Action Filed:	July 21, 2022
Trial Date:	None Set

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, California 90067-2915

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, California 90067-2915

I. INTRODUCTION.

This Court should grant the Motion to Dismiss or Stay for Inconvenient Forum (the Motion) of Defendant New Epona, Inc., d/b/a Blair (Blair). At the outset, Plaintiff Prehired LLC (Prehired)'s opposition to the Motion is untimely. Blair filed and served the Motion on September 16, 2022, with a noticed hearing date of October 18, 2022. Prehired's opposition to the Motion was due "at least nine court days" before the hearing, i.e., by Wednesday, October 5, 2022. Cal. Code Civ. Pro. § 1005(b). Prehired, however, filed an untimely opposition on October 10, 2022, just one day before Blair's reply deadline. Prehired's improper filing prejudiced Blair by depriving it of adequate opportunity to review and reply to the filing, including in connection with the purported factual disputes raised therein.

On the merits, Prehired did not respond substantively to Blair's Motion seeking dismissal for *inconvenient forum*, and instead submitted a brief focusing on the much different question of whether this Court has *general personal jurisdiction* over Blair. Prehired also relies heavily on an attorney declaration that details irrelevant, conjecture-filed assertions drawn from verbal descriptions of scattered internet references to Blair's operations. The declaration does nothing to undermine the sworn affidavit submitted by Blair's general counsel, and is irrelevant to whether New York is a more suitable forum than California for this litigation.

At bottom, because this matter has no connection to California and the parties would be greatly inconvenienced by litigating this dispute here, this Court should dismiss Prehired's First Amended Complaint (FAC) for re-filing in New York.

II. REPLY ARGUMENT.

A. BLAIR IS PREJUDICED BY PREHIRED'S UNTIMELY OPPOSITION, WHICH SHOULD BE DISREGARDED.

California Code of Civil Procedure § 1005(b) states that "[a]ll papers opposing a motion so noticed **shall be filed with the court and a copy served on each party at least nine court days**, and all reply papers at least five court days **before the hearing**." The hearing for this Motion was noticed for October 18, 2022, making Prehired's opposition due on October 5, 2022.

Prehired did not file or serve an opposition on October 5. Instead, it served an opposition nearly a week later, on October 10, 2022, just one day before Blair's reply deadline. This unjustifiably truncated schedule prejudiced Blair by depriving it of time to fully address the legal arguments in Prehired's opposition and factual issues raised in Prehired's supporting declaration, such as what appears to be the unsubstantiated internet research of opposing counsel.

California trial courts have discretion to refuse to consider untimely oppositions, and routinely exercise such discretion, particularly where the moving party is prejudiced by the delay. (*See, e.g., In re Allstate Northbrook Indem. Co.*, 2022 Cal. Super. LEXIS 38600, *1 (declining to consider untimely opposition); *Hollywood & Ivar v. Dwg Int'l*, 2021 Cal. Super. LEXIS 73937, *6 (same).) Here, because Blair has been prejudiced by the untimely filing, the Court should disregard Prehired's untimely filing and grant Blair's Motion.

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, California 90067-2915

B. PREHIRED'S ARGUMENTS IN OPPOSITION ARE LEGALLY INAPPOSITE.

As outlined in Blair's Motion, the doctrine of forum non conveniens permits a party to move to "stay or dismiss the action on the grounds of inconvenient forum." (*Stangvik v. Shiley Inc.* (1991) 54 Cal.3d 744, 757 (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 260–61 (1981).) The legal standard for this doctrine is a straightforward two-step analysis. First, the court must decide whether an alternative forum exists. (*Stangvik*, 41 Cal.3d at 752.) Second, the court must consider "the private interests of the parties and the public interest in keeping the case in California." (*NFL v. Fireman's Fund Ins. Co.* (2013) 216 Cal.App.4th 902, 917.)

Blair's position is that New York is a more suitable alternative forum for this litigation, and that the balance of private-interest and public-interest factors weigh in favor of dismissal. (Motion Memorandum of Points and Authorities (MPA), at 2–6.) In sum, (1) New York is a suitable alternative forum because Blair is headquartered in New York (Motion MPA, at 3; Hall Decl. ¶¶ 4–8); (2) private-interest factors favor litigation in New York, including the parties' places of residence, the relative ease of access to witnesses and evidence, and that the underlying contract elects for the application of New York law (Motion MPA, at 3–5); and (3) public-

interest factors also favor litigation in New York because California has no interest in adjudicating this action (Motion MPA, at 5-6).

Prehired, however, completely disregards this framework in its opposition, and instead attempts to establish that the Court has "general jurisdiction over [Blair] in California." (Opp. at 3–5). Blair, however, has not moved to dismiss for lack of personal jurisdiction, which renders this argument completely inapposite. The "minimum contacts" analysis offered by Prehired is irrelevant on this fact and is not responsive to Blair's Motion for dismissal on grounds of inconvenient forum.

Prehired also argues for the application of equitable estoppel on the theory that Blair somehow fraudulently induced Prehired to file this action in California. (Opp. at 5–7.) That doctrine applies where the following factors are present: "(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." (*Long Beach v. Mansell* (1970) 3 Cal. 3d 462, 489.) Here, Prehired has not carried its burden of establishing that *any* of these factors are met.

As to the "facts," Prehired offers only its counsel's written descriptions of "the website of Blair" relating to the location of Blair's offices and headquarters. (Declaration of John Keenan, at ¶¶ 7–9, 19.) Counsel does not attach screenshots of the purported content, and counsel himself surmises that Blair may have "previously had headquarters in San Francisco," but no longer does. (*Id.* at ¶¶ 17–18.) Importantly, even assuming *arguendo* the accuracy of the declaration, Prehired does not explain why Blair would have intended for those statements to be "acted upon" by Prehired for purposes of venue in a lawsuit. Nor does Prehired explain how it would be "injured" by having this lawsuit dismissed for re-filing in New York, particularly where its counsel of choice concedes that he is admitted to practice law there. (Keenan Dec. at ¶ 23.) There is simply no evidentiary or legal basis on which to find that Blair should be "estopped" from offering competent evidence of its actual headquarters location and related private-interest

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, California 90067-2915

factors.

Last, Prehired contends that Blair is not subject to "jurisdiction" in New York, ostensibly because it is "not authorized to do business" there and so lacks "minimum contacts." (Opp. at 7.) This is a red herring. Although a New York court would clearly have personal jurisdiction over Blair in any event, it is black-letter law that a party "may consent to a court's exercise of personal jurisdiction." (*See Aybar v. Aybar* (2019) 169 A.D.3d 137, 142, 93 N.Y.S.3d 159, 163 (citing *National Equipment Rental, Ltd. v Szukhent* (1964) 375 U.S. 311, 316).) Blair has already submitted a sworn declaration from its general counsel stating:

> I am authorized to acknowledge on behalf of Blair that it is subject to the personal jurisdiction of the courts in the State of New York with respect to the FAC filed in the instant action against Blair. Therefore, if a complaint for the same action against Blair was filed in a court in the State of New York, Blair would submit to personal jurisdiction in the New York court in connection with such an action in New York, and it would not contest personal jurisdiction over Blair in such an action in New York.

(Hall Dec. at ¶ 14.) Consequently, in addition to the myriad factors establishing not only a basis for jurisdiction but also a much more convenient forum in New York (*see* Hall Dec. ¶¶ 4–13), Blair has unequivocally consented to jurisdiction in New York.

III. CONCLUSION.

This Court should dismiss this action on the ground of forum non conveniens under California Code of Civil Procedure sections 410.30 and 418.10. In the alternative, this Court should stay the action pending resolution of a parallel action in New York.

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, California 90067-2915

Respectfully submitted,

DATED: October 11, 2022

BALLARD SPAHR LLP

Thomas F. Burke
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
Telephone: 215.864.8463
Facsimile: 215.864.8999

Peng Shao
2029 Century Park East, Suite 1400
Los Angeles, CA 90067-2915
Telephone: 424.204.4400
Facsimile: 424.204.4350

BY: */s/ Peng Shao*
Peng Shao

Attorneys for Defendant
New Epona, Inc., d/b/a Blair

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, California 90067-2915

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, California 90067-2915

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is **BALLARD SPAHR LLP**, 2029 Century Park East, Suite 1400, Los Angeles, CA 90067-2915. On October 11, 2022, I served the within document(s): **REPLY TO PLAINTIFF'S UNTIMELY OPPOSITION TO DEFENDANT'S MOTION TO DISMISS OR STAY FOR INCONVENIENT FORUM**

☑ **BY MAIL**: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

☐ **BY OVERNIGHT MAIL**: by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

☐ **BY PERSONAL DELIVERY**: by causing personal delivery by First Legal Network of the document(s) listed above to the person(s) at the address(es) set forth below.

☑ **BY E-MAIL**: by attaching an electronic copy of the document(s) listed above to the e-mail address listed below.

John J. Keenan Warren Law Group 445 S. Figueroa St. Los Angeles, CA 90071 T: 866.954.7687/866-335-6823 Email: johnkeenan@warren.law	*Attorney for Plaintiff, PREHIRED, LLC*

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under the penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 11, 2022, at Los Angeles, California.

Shari L. Green