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Motion Return Date and Time:
October 25, 2022, at 10:00 a.m.

Responsive papers due:
October 18, 2022 at 4:00 p.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
----------X
In re

PREHIRED, LLC, et al.,
Debtors.
----------X

Case No. 22-11293-PB:
(Prehired, LLC)
Case No. 22-11310-PB:
(Prehired Accelerator, LLC)
Case No. 22-11311-PB:
(Prehired Recruiting, LLC)

OPPOSITION OF DEBTORS PREHIRED, LLC,
PREHIRED ACCELERATOR, LLC, AND PREHIRED RECRUITING, LLC
TO THE STATE OF DELAWARE'S MOTION TO TRANSFER VENUE

Table of Contents

I. Preliminary Statement……1

II. Relevant Factual Background……1

III. Legal Argument……3

A. This Court is the proper venue for these bankruptcy proceedings because the Debtors' principal assets are located in New York……..3

B. The State of Delaware has failed to show that transfer of Prehired's properly-venued cases would be in the interests of justice or serve the convenience of the parties……6

IV. Conclusion……7

Table of Authorities

Federal Cases

In re Berau Capital Resources Pte Ltd, 540 B.R. 80 (Bankr. S.D.N.Y. 2015)……...3, 4, 5
In re Enron Corp., 274 B.R. 327 (Bankr. S.D.N.Y. 2002)……6
In re Farmer, 288 B.R. 31 (Bankr. N.D.N.Y. 2002)……...6
In re Garden Manor Associates, LP, 99 B.R. 551 (Bankr. S.D.N.Y. 1988)……6
In re Houghton Mifflin Harcourt Pub. Co., 474 B.R. 122 (Bankr. S.D.N.Y. 2012)……....3
In re Inversora Electrica de Buenos Aires S.A., 560 B.R. 650 (Bankr. S.D.N.Y. 2016)……..…4, 5
In re Octaviar Administration Pty Ltd., 511 B.R. 361 (Bankr. S.D.N.Y. 2014)……...…..4, 5

State Cases

Severnoe Sec. Corp. v. London & Lancashire Ins. Co., 255 N.Y. 120,
174 N.E. 299, 300 (1931)……..…3

Federal Statutes

28 U.S.C. § 1408……..……3, 5
28 U.S.C. § 1410……..……5

State Statutes

N.Y. General Obligations Law § 5-1401……4
N.Y. General Obligations Law § 5-1402……4

I. Preliminary Statement

Each of the three bankruptcy cases filed by Prehired, LLC, Prehired Accelerator, LLC, and Prehired Recruiting, LLC, (collectively "Prehired" or "Debtor") were properly filed in the Bankruptcy Court for the Southern District of New York. The applicable statutes and relevant case law support the Debtors' choice of venue. The State of Delaware now seeks a finding that not only is the Southern District of New York an improper venue but also that these matters should be transferred to the bankruptcy courts in Delaware or the Middle District of Florida. The Debtors respectfully submit that their choice of venue is proper, that a transfer to the District of Delaware would be inappropriate, and that these cases should remain where they currently and properly stand.

II. Relevant Factual Background

Debtor Prehired, LLC, is a company founded and developed by Joshua Jordan for the purpose of training its customers (or members) in software sales. *See* Declaration of Joshua Jordan, dated September 28, 2022 ("Jordan Decl.") ¶ 5, attached as **Exhibit A**.[1] Prehired, LLC uses Income Share Agreements ("ISAs") to help its members pay for the program. *Id.*, ¶ 17, *et seq.* The ISAs were developed under the advice and counsel of Darius Goldman of Meratas, Inc., which is a New York corporation that acted as the primary service provider and originator of the ISAs. *Id.*, ¶ 25; *see also* NYS Department of State printout showing Meratas Inc. to be a New York corporation, attached as **Exhibit B**. Furthermore, "[d]uring most of its existence, Prehired, and Mr. Jordan relied on the legal advice of Mr. Goldman for everything from contracts, Membership Service Agreements (MSAs), Income Share Agreements (ISAs), Settlement Payment Plans (SPP), and operational and corporate governance." Jordan Decl., ¶ 26.

[1] Also filed at ECF No. 2 in Bankruptcy Case No. 22-11293.

The assets of Prehired, LLC, include, in substantial part, the accounts receivable for the ISAs, as well as notes receivable in the form of contract assignments issued to Prehired Recruiting, LLC and Prehired Accelerator, LLC. *See* Schedule A/B of Prehired, LLC's bankruptcy filings, pp. 2 and 7, attached as **Exhibit C**.[2] . Prehired's assets also include causes of action for breach of contract against three entities. *Id*., p. 7. Importantly, the ISAs, the notes receivable, the contract assignments, and the causes of action for breach of contract nearly all apply New York law, and many would be appropriately venued in the United States District Court for the Southern District of New York. *See* Jordan Decl, ¶ 1.

Although virtually all of the ISAs apply New York law or have venue set in the United States District Court for the Southern District of New York, the ISAs were entered into by customers throughout 45 states and the District of Columbia. *See* List of Prehired member ISAs by state, attached as **Exhibit D**.Two of the 1,035 ISAs are from customers located in Delaware. As is the case with virtually all the ISAs, the contract with each of the Delaware customers is "governed by the laws of New York." In addition, Prehired is pursuing a legal action against New Epona, Inc. (d/b/a Blair) based on, *inter alia*, a breach of contract claim governed by New York law.

The Debtors' connection to the State of Delaware is minimal. Based upon Mr. Goldman's advice, Debtor Prehired Recruiting, LLC, was formed in Delaware on December 30, 2021, and Debtor Prehired, LLC, was converted to a Delaware LLC on December 29, 2021. *See* Jordan Decl., ¶ 43. These acts were undertaken upon the advice of Mr. Goldman and for the purpose of allowing Mr. Jordan to appear (without counsel) as a corporate representative in the Delaware Justice of the Peace Court to enforce certain defaulted ISA contracts. *Id*., ¶¶ 44, et seq. Other than these lawsuits,

[2] Also filed at ECF No. 10 in Bankruptcy Case No. 22-11293.

and the two Delaware customers, and as acknowledged by the Delaware Department of Justice Consumer Protection Unit, the Debtors did not have any ties with Delaware. *See* Copy of a March 8, 2022 letter sent by the Delaware Department of Justice Consumer Protection Unit to the Chief Magistrate of the Justice of the Peace Court, attached as **Exhibit E**..

The Debtors' connection to the State of New York is significant. As stated previously, nearly all the ISAs and contracts apply New York Law. *See* Jordan Decl., ¶ 1. Many of the ISAs have litigation explicitly venued in SDNY or New York State courts. *Id*. Debtors have deposited a significant retainer with a New York City-based law firm in a New York bank account. *Id*.; *see also* Statement of Financial Affairs, p. 5, attached as **Exhibit F**.[3]

In addition to the significant connection to this venue, this Court is also an appropriate venue due to the national aspects of these cases. The creditors are dispersed throughout the United States as reflected in the Prehired member list (**Exhibit B**). *See* Jordan Decl., ¶ 2. Moreover, several Attorneys General have launched investigations into the Debtors. *See* Jordan Decl., ¶ 2. Given the expanse of the creditors and investigations involved in these bankruptcy matters, this Court is ideally positioned to act as the venue within which these issues are to be resolved.

III. Legal Argument

A. This Court is the proper venue for these bankruptcy matters because the Debtors' principal assets are located in New York.

Venue in Chapter 11 cases may be properly based on the location of the Debtor's "principal assets." 28 U.S.C. § 1408(1). The location of a Debtor's principal assets is a question of fact. *In re Houghton Mifflin Harcourt Pub. Co.*, 474 B.R. 122, 129 n.23 (Bankr. S.D.N.Y. 2012).

Here, a factual analysis demonstrates that the location of the Debtors' principal assets lies in New York.

[3] Also filed at ECF No. 9 in Bankruptcy Case No. 22-11293.

As opposed to tangible property—for instance, real estate—other property of a Debtor may be intangible, such that its location "is in truth a legal fiction." *Severnoe Sec. Corp. v. London & Lancashire Ins. Co.*, 255 N.Y. 120, 174 N.E. 299, 300 (1931). A classic example of such intangible property are the rights under a contract. *See In re Berau Capital Resources Pte Ltd,* 540 B.R. 80, 83 (Bankr. S.D.N.Y. 2015) ("Contracts create property rights for the parties to the contract, [and a] Debtor's contract rights are intangible property of the Debtor.").

In this case, the Debtors' assets mostly consist of accounts receivable based on ISAs governed by New York law; the assignment of contracts that are interpreted according to New York law; and breach of contract causes of action. *See* Schedule A/B of Prehired, LLC's bankruptcy filings, pp. 2 and 7, (**Exhibit C)**.

"State law governs property rights in bankruptcy cases." *In re Berau*, 540 B.R. at 80. Under New York law, "intangible property rights, such [as] those arising from contracts, may have more than one situs." *Id*. (Citations omitted.) Parties to a contract may "establish a contract situs in [New York State] by designating New York governing law and a New York forum for contracts involving transactions of the requisite amounts." *Id*., at 84. (interpreting N.Y. General Obligations Law §§ 5-1401 and 5-1402). The requisite amounts are considered in the aggregate: for New York to be the governing law, the aggregate amount must be at least $250,000 (N.Y. GOL § 5-1401); for New York State to be the proper forum, the aggregate amount must be at least $1 million. N.Y. GOL § 5-1402.

Here, although the transactions with the Debtors' individual customers may not have each amounted to at least $250,000 or $1 million, the aggregate amount of these transactions, as well as the related assignments of the contracts, is well over $1 million. *See* Statement of Financial Affairs (**Exhibit F)**. Given the magnitude of the transactions, and the choice of law and forum in

the underlying contracts to be New York, the principal assets of the Debtors are appropriately considered to have a situs in New York State.

In addition to the contracts being situated in New York State, Debtors also have a retainer for a New York City Law Firm and a New York counsel on deposit in a New York-based bank account. Dollar deposits in a New York bank account or attorney retainer deposits in New York are proper considerations when analyzing jurisdiction and venue. *In re Inversora Electrica de Buenos Aires S.A.*, 560 B.R. 650, 655 (Bankr. S.D.N.Y. 2016). *See also In re Octaviar Administration Pty Ltd.*, 511 B.R. 361 (Bankr. S.D.N.Y. 2014) (concluding the location of a Debtors' property that is in the form of an undrawn retainer to be where that retainer is held). The location of the deposits can be considered, either alone or together with other relevant facts, to conclude that such jurisdiction and venue is proper in a particular court. *In re Inversora*, 560 B.R. at 655. In this case, Debtors have contracts situated in New York State with New York State choice of law and forum provisions, attorneys in New York State, and moneys (including an attorney retainer) in a New York State bank account. It is respectfully submitted that the presence of these various factors demonstrates that venue is proper in this Court.

The State of Delaware is asking the Court to avoid considering factors that were properly relied upon in *In re Inversora*, 560 B.R. at 655, *In re Berau Capital*, 540 B.R. at 83-84, and *In re Octaviar*, 511 B.R. at 372-73. Admittedly, these cases involved foreign proceedings under Chapter 15 of the Bankruptcy Code. Furthermore, it is not disputed that venue of cases under Chapter 15 are governed by 28 U.S.C. § 1410, while the venue provision applicable to the cases before this Court is 28 U.S.C. § 1408. Given, however, the similarities of these statutes, the analysis undertaken in the Chapter 15 cases cited above should also be employed here.

In this case, as well as in the Chapter 15 cases, the issue is the location of the Debtor's assets. 28 USC § 1408 permits venue "in the district . . . in which the . . . principal assets . . . of the [Debtor] have been located [for the requisite time period]." Similarly, 28 USC § 1410 allows venue in "the district . . . in which the Debtor has its . . . principal assets." The question is the same: "Where are the Debtor's principal assets?" Given the commonality of the question, the answer thereto should be reached by way of a similar analysis. Indeed, the State of Delaware's simplification of the issue – as if it were merely between one bankruptcy chapter over another – ignores the precepts to establish proper jurisdiction and venue. With the contracts being situated in New York, having New York choice of law and forum provisions, as well as having assets in a New York based bank account of New York City based attorneys, the Debtors' principal assets are located in New York State. These factors, therefore, are relevant to determining proper jurisdiction and venue irrespective of the bankruptcy chapter. Accordingly, venue in this district is proper.

B. The State of Delaware failed to show that transfer of Prehired's properly-venued cases would be in the interests of justice or serve the convenience of the parties.

Given the Debtors' proper choice of venue, it is respectfully submitted that the cases should remain before this Court. Although a court "may transfer [a] case to any other district if the court determines that the transfer is in the interest of justice or for the convenience of the parties," neither the interest of justice nor the parties' convenience would be better served by a transfer to the District of Delaware.

"A Debtor's choice of forum is entitled to great weight if venue is proper." *In re Enron Corp*., 274 B.R. 327, 342 (Bankr. S.D.N.Y. 2002). "'[W]here a transfer would merely shift the inconvenience from one party to the other, the [Debtor's] choice of forum would not be disturbed.'" *In re Garden Manor Associates, LP*, 99 B.R. 551, 555 (Bankr. S.D.N.Y. 1988)

(citation omitted). Furthermore, "[t]here is a presumption that the district court where the bankruptcy petition is filed is the appropriate district for venue purposes (citation omitted) and the burden is on the party disputing venue to establish that position by a preponderance of the evidence." *In re Farmer,* 288 B.R. 31, 34 (Bankr. N.D.N.Y. 2002) (citation omitted). The State of Delaware has not met that burden.

A transfer in this case would merely serve the interests of the State of Delaware. The connections to Delaware are minimal. While it is true that two of the three Debtors are Delaware companies, Debtors do not rely on the domicile or residence of these companies to establish their selection of venue. As shown above, only two of the underlying contracts are with Delaware residents. The issues, in this case, involve over one thousand individuals throughout the United States. To transfer the 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. The Debtor's choice of this Court should stand.

IV. Conclusion

Venue is proper in the Southern District of New York because the Debtors' principal assets (in the form of New York contracts, with New York choice of law and forum provisions, as well as monies held in a New York based bank account for New York City based attorneys) are located in New York. The Debtors' choice of proper forum should be given great weight. The movant State of Delaware has failed to establish that a transfer to the District of Delaware would be in the interest of justice or better serve the convenience of the parties. Accordingly, the State of Delaware's motion to transfer venue should be denied, and these cases should continue to proceed before this Court.

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the State of Delaware's motion be denied in its entirety and that the Debtors be granted such other and further relief as is just and proper.

Dated: October 18, 2022

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