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Defendant Simon Kukes (“Kukes”) respectfully submits this memorandum of law in support of his motion to dismiss the Revised First Amended Complaint (“Compl.”) of Plaintiff Norex Petroleum Limited (“Norex”) for lack of personal jurisdiction under Civil Practice Law and Rules (“CPLR”) §§ 301, 302 and 3211(a)(8).<sup>1</sup> Kukes also joins the joint motion to dismiss and the joint memorandum of law filed by Defendants under CPLR §§ 327(a), 3211(a)(1), (5) and (7), which requires dismissal of the Complaint in its entirety as to all Defendants, and incorporates herein by reference the grounds for dismissal as set forth in that motion.

### **PRELIMINARY STATEMENT**

This Court lacks personal jurisdiction over Defendant Kukes, who, as shown below, is not a New York resident, transacted no business in New York, did not commit a tort in New York, and did not commit a tort outside New York that caused injury in New York. Indeed Plaintiff Norex Petroleum Limited (“Norex”), a non-US company headquartered in Canada with no ties to New York (Compl. ¶ 4), does not allege any injury in New York as a result of any alleged actions in New York. Moreover, Plaintiff does not and cannot allege the requisite facts to establish personal jurisdiction based on any purported conspiracy. This Court therefore lacks personal jurisdiction over Kukes and should grant this motion to dismiss.

### **FACTS<sup>2</sup>**

#### **A. Kukes is Not and Has Never Been a Resident of New York**

Defendant Kukes served in Russia as the President and CEO of Defendant OAO Tyumen Oil Company (“TNK”), a Russian company, from 1998 through mid-2003. Compl. ¶¶ 12, 17; Affidavit of Simon Kukes (“Kukes Aff.”), ¶¶ 6. Plaintiff erroneously alleges that Kukes is a

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<sup>1</sup> A copy of the Revised First Amended Complaint is attached to the Affirmation of Sheryl B. Galler, Esq., dated Sept. 16, 2011.

<sup>2</sup> For a full statement of the underlying facts, we respectfully refer the Court to Defendants’ Joint Memorandum of Law in Support of the Motion to Dismiss Plaintiff Norex Petroleum Limited’s Complaint, dated September 16, 2011.

resident of New York. Compl. ¶ 12. In fact, Kukes is and has been a resident of Russia since 1996. Kukes Aff. ¶ 3. Since leaving TNK in 2003, he has worked in Russia for other companies. Id. ¶ 6.

Kukes emigrated from Russia to the United States in 1977. Between 1977 and 1996, he lived in Texas, Oklahoma and Illinois, and became a U.S. citizen. He returned to Russia in 1996 and has lived there ever since. Kukes does not live in New York, nor has he ever lived there. He does not do business in New York, does not pay taxes in New York, and has never had a New York drivers' license. Kukes has visited the United States occasionally over the past 15 years, primarily visiting friends and relatives, but has spent no more than 35 days per year there. He has occasionally visited his ex-wife Clara Kukes at her apartment in New York, which the couple bought in 2000 and which Kukes transferred to her as part of their divorce in 2005. Kukes last visited the apartment in 2008 when visiting his ex-wife, but has never lived there. Id. ¶¶ 2-7.

Kukes was not personally served with the Summons and Complaint in this action while he was physically present in New York. Rather, counsel New York accepted service on his behalf, reserving Kukes' right to dispute jurisdiction. Kukes does not consent to jurisdiction in New York. Id. ¶¶ 8-9.

**B. Plaintiff Does Not and Cannot Allege Any Conduct by Kukes in New York**

Plaintiff's Revised First Amended Complaint, which spans 88 paragraphs, has only a handful of allegations involving Kukes, none of which allege any conduct in New York or even any conduct that had an effect in New York. Specifically, Plaintiff alleges only that:

- Defendants including TNK “under the leadership of its President and CEO, Defendant Kukes” assumed control in Russia of the assets of Chernogorneft (“CNG”), a Russian oil company. Compl. ¶ 35.
- Kukes and other Defendants caused TNK to file a complaint in a Russian court against Norex. Compl. ¶ 41.

- Kukes and other Defendants “bribed Russian officials.” Compl. ¶ 43.<sup>3</sup>
- Defendants, “in coordination with then president of TNK, Defendant Kukes,” organized an armed seizure of the Moscow offices of Yugraneft, a Russian oil company. Compl. ¶¶ 47.
- Kukes visited Yugraneft’s field operations in Russia, informed Yugraneft’s employees that TNK had taken over the company, and told them that they needed to sign employment agreements. Compl. ¶ 50.
- Kukes and other Defendants stripped Yugraneft of its assets, continued bribing Russian officials and submitted fabricated shareholder minutes to the Russian court. Compl. ¶ 51.

These allegations, none of which allege any conduct by Kukes in New York or any effect in New York, cannot confer personal jurisdiction in New York over Kukes.

## ARGUMENT

### I.

#### **THERE IS NO BASIS FOR PERSONAL JURISDICTION OVER KUKES**

Plaintiff does not and cannot meet its burden of establishing the existence of personal jurisdiction in New York over Kukes under either CPLR §§ 301 or 302 or the requirements of Due Process. Mobile Training & Educ., Inc. v. Aviation Ground Schs. of Am., No. 602342/08, 2010 WL 3310257, at \*1 (Sup. Ct. N.Y. Cnty. June 23, 2010) (Bransten, J.) (citing O’Brien v. Hackensack Univ. Med. Ctr., 305 A.D.2d 199, 200 (1st Dep’t 2003)).

#### **A. There is No Basis for General Jurisdiction Over Kukes**

General jurisdiction under CPLR § 301 requires a defendant’s actual presence in New York. Thus, a New York court has personal jurisdiction over a New York resident who has been properly served. Rawstorne v. Maguire, 265 N.Y. 204, 207 (1934); Adams v. Adams, 272 A.D.

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<sup>3</sup> Plaintiff alleges that the bribes were made with funds wired from New York, Compl. ¶ 43, but does not allege that Kukes wired those funds. In any event, as will be discussed below, wiring funds from New York is insufficient to confer New York jurisdiction.

29, 30, 68 N.Y.S.2d 294, 295 (1st Dep't 1947). A New York court may also exercise general jurisdiction over a nonresident defendant, but only if such person 1) is physically present in New York when served with process, 2) consents to jurisdiction in New York, or 3) is doing business in New York on his own behalf. Global Gospel Music Grp. LLC v. Habukkuk Music, Inc., No. 10 Civ. 01818, 2010 WL 4968172, at \*2 (S.D.N.Y. Dec. 6, 2010) (applying New York law) (citing, inter alia, Rawstorne, 265 N.Y. at 207; CV Holdings, LLC v. Bernard Tech., Inc., 14 A.D.3d 854, 788 N.Y.S.2d 445, 446 (3d Dep't 2005); and Brinkmann v. Adrian Carriers, Inc., 29 A.D.3d 615, 815 N.Y.S.2d 196, 199 (2d Dep't 2006)).

Plaintiff does not and cannot meet the requirements of section 301. Kukes is and has been a resident of Russia since 1996, and previously was a resident of Illinois. Kukes Aff., ¶¶ 2-3. He is not a resident of New York and was not a resident of New York during the relevant period. Id. at ¶¶ 2-4. Kukes was not served with process while physically present in New York. Id. at ¶ 8. He does not consent to jurisdiction in New York. Id. at ¶ 9. He does not do business in New York on his own behalf. Id. at ¶ 4. Therefore, Kukes is not subject to personal jurisdiction of the New York courts under section 301. Global Gospel Music, 2010 WL 4968172, at \*2; see also Laufer v. Ostrow, 55 N.Y.2d 305, 313 (1982).

**B. There is No Basis for Long-Arm Jurisdiction Over Kukes**

Plaintiff fails to establish long-arm jurisdiction over Kukes under CPLR § 302(a) because Plaintiff does not and cannot show that Kukes, “in person or through an agent,” did any of the following acts, with respect to a cause of action arising from the act:

1. transact[ed] any business within the state or contracts anywhere to supply goods or services in the state; or
2. commit[ted] a tortious act within the state, or
3. commit[ted] a tortious act without the state causing injury within the state, if he



(i) regularly does business in the state, or

(ii) should reasonably expect the act to have consequences in the state.

N. Valley Partners, LLC v. Jenkins, 885 N.Y.S.2d 712, 2009 WL 1058162, at \* 3 (Sup. Ct. N.Y. Cnty. Apr. 14, 2009) (Bransten, J.) (citing CPLR § 302(a)). Plaintiff has failed to allege any such conduct on the part of Kukes and thus has failed to meet its burden of establishing long-arm jurisdiction.

**1. There is No Basis for Jurisdiction Under § 302(a)(1)**

Plaintiff fails to satisfy § 302(a)(1), because Plaintiff does not and cannot point to a transaction “attributable to [Kukes] which occur[red] in New York” whereby he “purposefully avail[ed] himself of the privilege of conducting activities” within the state or “projected himself” into a transaction with a New York “center of gravity.” DirecTV Latin Am., LLC v. Park 610, LLC, 691 F. Supp. 2d 405, 417, 420 (S.D.N.Y. 2010) (emphasis in original); accord, N. Valley Partners, 2009 WL 1058162, at \*5 (transaction must evidence “purposeful involvement in New York business”). Indeed, nowhere in the Complaint does plaintiff allege any transaction attributable to Kukes that took place in New York.

Plaintiff’s mere allegation that Kukes bribed officials in Russia with money wired from New York is not enough to confer New York jurisdiction because, as a matter of law, the center of gravity of the transactions remained in Russia. See DirecTV Latin Am., LLC, 691 F.Supp.2d at 422-24 (that funds used to pay kickbacks in Chile were wired from New York not sufficient to confer jurisdiction; payments could have been made anywhere without changing nature of allegations); see also Landau v. New Horizon, No. 02 Civ. 6802, 2003 WL 22097989, at \*6 (S.D.N.Y. Sept. 8, 2003) (that funds were drawn from a New York bank account is insufficient to confer jurisdiction); Societe Generale v. Florida Health Scis. Ctr., No. 03 Civ. 5615, 2003 WL

22852656, at \*4 (S.D.N.Y. Dec. 1, 2003) (maintenance of New York bank account insufficient to confer jurisdiction); Russeck Fine Arts Grp., Inc. v. Theodore B. Donson, Ltd., 867 N.Y.S.2d 20, 2008 WL 2762944, at \*4 (1st Dep't June 27, 2008) (transfer of funds from New York to foreign account, plus faxes and letters from New York, insufficient to support jurisdiction); Pramer S.C.A. v. Abapplus Int'l Corp., 76 A.D.3d 89, 97, 907 N.Y.S.2d 154, 160 (1st Dep't 2010) (use of New York bank account does not establish jurisdiction where all aspects of transaction occurred out of state).

## **2. There is No Basis For Jurisdiction Under § 302(a)(2)**

Plaintiff also fails to satisfy § 302(a)(2) because it fails to allege that Kukes committed a tort within New York that gave rise to this action. Under § 302(a)(2), the defendant must commit the tort while he is “physically in New York State.” DirecTV Latin Am., LLC, 691 F. Supp. 2d at 424; see also Feathers v. McLucas, 15 N.Y.2d 443, 464 (holding that § 302(a)(2) covers only tortious acts committed “in this State”); Bensusan Rest. Corp. v. King, 126 F.3d 25, 28 (2d Cir. 1997) (same). All of the conduct alleged against Kukes in the Complaint is alleged to have taken place in Russia, not New York. Conduct in a foreign country cannot satisfy § 302(a)(2). DirecTV Latin Am., LLC, 691 F. Supp. 2d at 424 (improper transfer of shares of Uruguayan corporation to two individuals in Argentina does not confer § 302(a)(2) jurisdiction).

## **3. There is No Basis For Jurisdiction Under § 302(a)(3)**

Plaintiff cannot establish personal jurisdiction under § 302(a)(3) because the Complaint is completely devoid of allegations that any act by Kukes caused injury to a person or property within New York State. See Mobile Training & Educ., Inc., 2010 WL 3310257, at \*2 (under § 302(a)(3), a plaintiff must establish, inter alia, that 1) the defendant committed a tortious act outside the State; 2) the cause of action arises from that act; and 3) the act caused injury to a

person or property within the State). Plaintiff is a non-U.S. corporation with offices in Canada, Compl. ¶ 4, and there is no allegation that it has any presence in New York – much less that it suffered any injuries in New York. Absent any showing that any act by Kukes caused injury to a person or property within New York State, there can be no jurisdiction under § 302(a)(3). Mobile Training & Educ., Inc. 2010 WL 3310257, at \*5.

#### **4. Plaintiff's Conspiracy Allegations Do Not Establish Jurisdiction Over Kukes**

Plaintiff does not and cannot establish this Court's personal jurisdiction over Kukes by alleging a conspiracy among Defendants where, as here, Plaintiff fails to show any alleged tort in New York in further of the alleged conspiracy or any alleged injury in New York as a result of the alleged conspiracy. See De Capriles v. Lopez Lugo, 293 A.D.2d 405, 406, 740 N.Y.S.2d 623 (1st Dep't 2002), appeal dismissed, 98 N.Y.2d 717 (2002). As discussed above, Plaintiff does not and cannot allege that Kukes committed any tort in New York. See Section I.B.2, supra. Plaintiff also fails to allege that any other Defendant committed any tort in New York. See Defendants OAO Tymen Oil Company and TNK-BP Limited's Memorandum of Law in Support of Their Motion to Dismiss Plaintiff Norex Petroleum Limited's Complaint for Lack of Personal Jurisdiction, dated September 16, 2011 (the "TNK Defendants' Memorandum"), at Section I.A. (citing cases). Any alleged wire transfer from New York to Russia is insufficient to confer jurisdiction. See Section I.B.1, supra; see also TNK Defendants' Memorandum, at Section I.B. Finally, there is no allegation that Norex, a non-US company operating outside the US, was injured in New York. See Section I.B.3, supra; see also TNK Defendants' Memorandum, at Section I.A. In sum, Plaintiff fails to establish the "substantial connection" to New York that is required to establish jurisdiction under CPLR § 302(a)(2).

Moreover, Plaintiff fails to allege a prima facie case of conspiracy and sufficient facts to support an inference that Kukes was a member of such alleged conspiracy. Plaintiff must show that any co-conspirator in New York acted “for the benefit and with the consent and knowledge” of Kukes and that Kukes knew that the alleged tort would have an effect in New York. See De Capriles, 293 A.D.2d at 406; Pramer S.C.A., 76 A.D.3d at 97, 907 N.Y.S.2d at 160; N. Valley Partners, 2009 WL 1058162, at \*3 (citing Kreutter v. McFadden Oil Corp., 71 N.Y.2d 460, 467 (1988)) (to establish jurisdiction based on the actions of alleged agents in New York, a plaintiff must allege that the domiciliary defendants “engaged in purposeful activities in New York . . . for the benefit of and with the knowledge and consent of [the non-domiciliary], and that [the non-domiciliary] exercised some control over [them] in the matter”).<sup>4</sup> Here, Plaintiff fails to allege that Kukes had any control over any of the alleged co-conspirators in New York. To the contrary; Plaintiff alleges that Defendants Leonard Blavatnik and Victor Vekselberg, through their companies Defendants Access and Renova, controlled TNK, the company that employed Kukes as president and CEO. Compl. ¶¶ 11-12. Further, Plaintiff cannot allege that the alleged tort had an effect in New York or that Kukes knew of any effects in New York because Norex was not in New York and does not allege injury in New York. See Pramer S.C.A., 907 N.Y.S.2d at 160.

As such, Plaintiff cannot establish personal jurisdiction over Kukes through its allegations of a purported conspiracy.

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<sup>4</sup> See also Best Cellars Inc. v. Grape Finds at Dupont, Inc., 90 F. Supp. 2d 431, 446 (S.D.N.Y. 2000) (plaintiff must show that “(a) the defendant had an awareness of the effects in New York of its activity; (b) the activity of the co-conspirators in New York was to the benefit of the out-of-state conspirators; and (c) the co-conspirators acting in New York acted ‘at the direction or under the control,’ or ‘at the request of or on behalf of’ the out-of-state defendant”); Scott v. Nat’l Ass’n for Stock Car Racing, Inc., No. 06 Civ. 6029, 2008 WL 217049, at \*8 (S.D.N.Y. Jan. 17, 2008) (defendant’s awareness of the effects in New York of its activity is “required;” complaint dismissed where plaintiff failed to allege “specific factual connections between the non-resident defendants and transactions occurring in New York”).

## **5. Exercising Jurisdiction Over Kukes Would Offend Due Process**

The exercise of personal jurisdiction in New York over Kukes would violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution. See Mobile Training & Educ., Inc., 2010 WL 3310257, at \*5. Personal jurisdiction over a non-domiciliary defendant comports with due process only where the defendant has certain “minimum contacts” with the forum “such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.” Id. (citing Int’l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). The “minimum contacts” test is satisfied when has a defendant’s “conduct and connection with the forum State” are such that it “should reasonably anticipate being haled into court there.” Id. (citing World–Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)). It is essential that there be “some act by which the defendant purposefully avails itself of the privilege of conducting activities within [New York], thus invoking the benefits and protections of its laws.” N. Valley Partners, 2009 WL 1058162, at \* 4 (citing Hanson v. Denckla, 357 U.S. 235, 253 (1958)).

In this case, as in Northern Valley Partners, there are insufficient factual allegations as to purposeful activity by Kukes in New York. Exercising personal jurisdiction over Kukes – who does not and did not live in New York, do business in New York or have any connection to New York – would offend notions of “fair play and substantial justice.” Burger King Corp. v. Rudzewicz, 471 U.S 462, 476 (1985).

**CONCLUSION**

For the foregoing reasons, and for the reasons set forth in Defendants' joint motion to dismiss, Kukes respectfully requests that the Court dismiss Norex's Revised First Amended Complaint in its entirety.

Dated:           New York, New York  
                  September 16, 2011

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