

United States District Court,
S.D. New York.
BEST VAN LINES, INC., Plaintiff,
v.
Tim WALKER, Defendant.
No. 03 Civ. 6585(GEL).
May 5, 2004.

[Darren Oved](#), **Oved & Oved**, New York, NY, for plaintiff.
Tim Walker, pro se.

OPINION AND ORDER

LYNCH, J.

**1* This defamation action in diversity arises out of defendant's publication on his website, MovingScam.com, of certain allegedly false information about plaintiff Best Van Lines, Inc. ("BVL"). Defendant, who is *pro se*, has moved this court by letter for dismissal based on lack of personal jurisdiction and, in the alternative, for a transfer of venue to the Northern District of Iowa.^{[FN1](#)} Because it the Court lacks personal jurisdiction over the defendant, the motion to dismiss will be granted.

[FN1](#). Defendant's letter does not cite to the specific provisions under which his application was brought. However, the Court construes the moving papers of *pro se* parties liberally. See [Boddie v. Schneider, 105 F.3d 857, 860 \(2d Cir.1997\)](#). Although Walker did not raise the defense of lack of jurisdiction until his reply brief, the Court will accept his application as both a motion to dismiss for lack of personal jurisdiction under [Rule 12\(b\)\(2\) of the Federal Rules of Civil Procedure](#), and in the alternative, as a motion for transfer of venue under [42 U.S.C. § 1404](#). Plaintiff will suffer no prejudice as a result, given that the opposition papers respond fully on each of these fronts.

I. Background

Defendant Timothy Walker, a college student at Wartburg College in Waverly, Iowa, runs a consumer information website focused on exposing allegedly unfair practices of moving companies.^{[FN2](#)} According to Walker, he created the site after a moving company (other than the plaintiff) cheated him on a move from Virginia to Nevada. (Reply at 1.) The complaint alleges that Walker posted information about BVL on MovingScam.com on or about August 5, 2003. The complained-of postings included a "Black List Report" on BVL, as well as a response posted by Walker to a consumer question regarding BVL, asserting that the company was out of compliance with various regulatory and licensing provisions. Upon learning of these postings, BVL contacted Walker's web hosting service, Edurus, to request that Walker's website be shut down. Walker claims that he removed the offending material from the site on August 25, 2003, after Edurus informed him that BVL was threatening litigation. (Walker Aff. at ¶ 5.) All told, the complained-of material was publicly posted for only twenty days.

[FN2](#). Walker claims that he runs his website out of his home in Iowa, and that the server on which it is based is physically located in Florida. (Reply at 2.)

On August 26, 2003, BVL sued Walker for defamation in the Southern District of New York, asserting \$500,000 in damages. Walker then sent a letter requesting that the case be transferred to the Southern District of Iowa, where he resides. BVL opposed transfer, arguing that its place of business and principal witnesses are in New York. In addition,

BVL treated Walker's letter-motion as a motion to dismiss for lack of personal jurisdiction, pursuant to [Rule 12\(b\)\(2\) of the Federal Rules of Civil Procedure](#), asserting jurisdiction under [New York CPLR § 302\(a\)\(1\)](#) based on Walker's operation of the MovingScam website. Walker's reply brief then argued at length that personal jurisdiction was lacking, as he had no business contacts with New York, does not own property in New York, and "has never set foot in New York except once during 1999 when [he] attended a professional conference." (Reply at 2.)

II. Personal Jurisdiction

A. Legal Standard

On a motion to dismiss pursuant to [Fed.R.Civ.P. 12\(b\)\(2\)](#), the plaintiff bears the burden of establishing jurisdiction. [In re Magnetic Audiotape Antitrust Litigation](#), 334 F.3d 204, 206 (2d Cir.2003). District courts have considerable discretion in determining how best to handle jurisdictional questions: they may decide the matter on the pleadings and affidavits, or through an evidentiary hearing, which in turn may be based either solely upon papers or through a proceeding at which evidence is taken. [CutCo Industries, Inc. v. Naughton](#), 806 F.2d 361, 364-65 (2d Cir.1986). The burden of proof required to demonstrate jurisdiction varies depending on the method the court uses for determining whether jurisdiction exists. *Id.* Where the court relies on affidavits and pleadings, before any discovery has taken place, the plaintiff "need only allege facts constituting a *prima facie* showing of personal jurisdiction." In establishing its *prima facie* case, the plaintiffs may rely on the complaint, affidavits, and other supporting materials, [Marine Midland Bank, N.A. v. Miller](#), 664 F.2d 899, 904 (2d Cir.1981), and courts must "construe the pleadings and affidavits in plaintiff's favor at this early stage." [PDK Labs, Inc. v. Friedlander](#), 103 F.3d 1105, 1108 (2d Cir.1997); see also [Hoffritz for Cutlery, Inc. v. Amajac, Ltd.](#), 763 F.2d 55, 57 (2d Cir.1985) (allegations of jurisdictional fact must be construed in the light most favorable to the plaintiff). "In contrast, when an evidentiary hearing is held, the plaintiff must demonstrate the court's personal jurisdiction over the defendant by a preponderance of the evidence." [Metro. Life Ins. Co. v. Robertson-Ceco Corp.](#), 84 F.3d 560, 566 (2d Cir.1996); see also [CutCo](#), 806 F.2d at 364 -65 (same).

*2 A federal court sitting in diversity may exercise jurisdiction over a foreign defendant if, first, the defendant is amenable to process under the law of the forum state, [Omni Capital Int'l Ltd. v. Rudolf Wolff & Co.](#), 484 U.S. 97, 105 (1987); [Metropolitan Life Ins](#), 84 F.3d at 567, and second, the exercise of personal jurisdiction comports with due process under [International Shoe Co. v. Washington](#), 326 U.S. 310 (1945), and its progeny. See [Arrowsmith v. United Press Int'l](#), 320 F.2d 219, 223 (2d Cir.1963) (*en banc*) ("[T]he amenability of a foreign corporation to suit in a federal court in a diversity action is determined in accordance with the law of the state where the court sits, with 'federal law' entering the picture only for the purpose of deciding whether a state's assertion of jurisdiction contravenes a constitutional guarantee."); [Clarendon Nat'l Ins. Co. v. Lan](#), 152 F.Supp.2d 506, 515 (S.D.N.Y.2001).

Personal jurisdiction is asserted over defendant in this case under [New York Civil Practice Law and Rules § 302\(a\)\(1\)](#), New York's long-arm statute, which confers specific jurisdiction over "any non-domiciliary [who] transacts any business within the state or contracts anywhere to supply goods or services in the state." [NY CPLR § 302\(a\)\(1\)](#). "A nondomiciliary 'transacts business' under [CPLR 302\(a\)\(1\)](#) when he purposefully avails [himself] of the privilege of conducting activities within [New York], thus invoking the benefits and protections of its laws." [CutCo](#), 806 F.2d at 365 (alterations in original), quoting [McKee Electric Co. v. Rauland-Borg Corp.](#), 20 N.Y.2d 377, 382 (1967). Furthermore, jurisdiction is only proper under this statutory provision where the cause of

action “arises out of the subject matter of the business transacted.” [Citigroup Inc. v. City Holding Co.](#), 97 F.Supp.2d 549, 564 (S.D.N.Y.2000); [CutCo](#), 806 F.2d at 365 (same). “A suit will be deemed to have arisen out of a party’s activities in New York if there is an articulable nexus, or a substantial relationship, between the claim asserted and the actions that occurred in New York.” ^{FN3} [Henderson v. I.N.S.](#), 157 F.3d 106, 123 (2d Cir.1998), citing [Kronisch v. United States](#), 150 F.3d 112, 130 (2d Cir.1998) (internal quotations omitted).

[FN3](#). Plaintiff does not assert jurisdiction under New York’s general jurisdiction statute, [CPLR § 301](#). [CPLR § 301](#) allows for jurisdiction over a defendant whose business contacts in New York are so “sustained and continuous” that the defendant may be said to be “present” in the jurisdiction. [Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione Motonave Achille Lauro in Amministrazione Straordinaria](#), 937 F.2d 44, 51 (2d Cir.1991). While [§ 301](#) requires more substantial contacts with the state than [§ 302\(a\)\(1\)](#), it also provides for a broader basis for jurisdiction in that these contacts need not be linked to the injury asserted.

Determining whether personal jurisdiction exists has become increasingly complex in the internet age. Although Second Circuit case law provides little guidance through this territory, Judge Sweet has aptly summarized the state of the law as it has developed around the country:

[T]he courts have identified a spectrum of cases involving a defendant’s use of the internet. At one end are cases where the defendant makes information available on what is essentially a ‘passive’ web site. This use of the internet has been analogized to an advertisement in a nationally-available magazine or newspaper, and does not without more justify the exercise of jurisdiction over the defendant. At the other end of the spectrum are cases in which the defendant clearly does business over the internet, such as where it knowingly and repeatedly transmits computer files to customers in other states. Finally, occupying the middle ground are cases in which the defendant maintains an interactive web site which permits the exchange of information between users in another state and the defendant, which depending on the level and nature of the exchange may be a basis for jurisdiction.

^{*3} [Citigroup](#), 97 F.Supp.2d at 565 (citations omitted); see also [Zippo Mfg. Co. v. Zippo Dot Com](#), 952 F.Supp. 1119, 1124 (W.D.Pa.1997) (outlining framework for analyzing internet jurisdiction cases). Although this “sliding scale” model provides a useful guide to how courts have approached such claims in the recent past, it does not amount to a separate framework for analyzing internet-based jurisdiction, and traditional statutory and constitutional principles remain the touchstone of the inquiry. See [Hy Cite Corp. v. Badbusinessbureau.com. L.L.C.](#), 297 F.Supp.2d 1154, 1160-61 (W.D.Wisc.2004) (rejecting notion that sliding scale framework represents a “specialized test” for internet jurisdiction, but finding that “[t]he website’s level of interactivity may be one component of a determination whether a defendant has availed itself purposefully of the benefits or privileges of the forum state”); [Winfield Collection, Ltd. v. McCauley](#), 105 F.Supp.2d 746, 750 (E.D.Mich.2000) (“[T]he need for a special Internet-focused test for ‘minimum contacts’ has yet to be established.... [T]he ultimate question can still as readily be answered by determining whether the defendant did, or did not, have sufficient ‘minimum contacts’ in the forum state.”).

B. Exercise of Jurisdiction over Defendant

In asserting jurisdiction in the present case, plaintiff argues that defendant’s website falls into the third, “middle ground” category of interactive websites because it includes “interactive communications with prospective BVL customers,” allows viewers to post

comments, and solicits donations. (P. Opp. 3-4; Compl. ¶¶ 7, 9). Plaintiff claims that defendant thus “does business” in New York for purposes of [CPLR § 302\(a\)](#). Defendant challenges personal jurisdiction on the ground that his website is primarily passive, that it is not a commercial enterprise, and that outside of the general availability of the website to New York visitors, he has had no further contacts with New York.

While it is true that the website has certain interactive components, thus arguably placing it within the “middle ground,” jurisdiction does not automatically follow from this categorization. Rather, although interactive websites may often support a finding of personal jurisdiction, [Hsin Ten Enterprise USA, Inc. v. Clark Enterprises, 138 F.Supp.2d 449, 456 \(S.D.N.Y.2000\)](#), whether or not jurisdiction may be exercised depends upon the quantity and quality of a defendant's contacts with the forum state, in line with statutory authority and due process principles. The proper assertion of jurisdiction in this case thus depends on the actual interaction between New York viewers and Walker's website, and the nexus between those interactions and the asserted injury.^{FN4}

[FN4](#). Many cases involving interactive or semi-interactive websites deal with commercial enterprises such as e-merchants, rather than primarily informational websites like Walker's MovingScam site. See, e.g., [Bensusan Restaurant Corp. v. King, 126 F.3d 25 \(2d Cir.1997\)](#) (nightclub); [Citigroup, 97 F.Supp.2d 549](#) (commercial lending institution). In such cases, the traditional understanding of “transacting business” maps more easily onto the internet realm than it does in cases like this one, where the claimed “interactions” are not commercial in nature. For this reason, even though Walker's website has interactive components, this case is more closely analogous to cases addressing the assertion of jurisdiction based on information published in newspapers or magazines, which may also have interactive elements (for example, a letters to the editor section). Even in the context of journalism on the internet, such cases have largely been analyzed with an emphasis on traditional statutory and due process principles, and without heavy reliance on the tripartite categorization outlined above for determining jurisdiction over website operators. See, e.g., [Young v. New Haven Advocate, 315 F.3d 256 \(4th Cir.2002\)](#); [Realuyo v. Villa Abrille, No. 01 Civ. 10158, 2003 WL 21537754 \(S.D.N.Y. July 8, 2003\)](#).

The plaintiff's opposition papers indicate three interactions that might serve as potential bases for jurisdiction under [CPLR § 302](#): the posting of the Black List Report, the editorial response to the visitor's question regarding BVL, and the solicitation of donations. Each will be analyzed in turn.

1. *The Black List Report*

***4** The first basis for personal jurisdiction is Walker's posting of the “MovingScam.com Black List Report” on BVL on or about August 5, 2003. The posting claimed, *inter alia*, that BVL “was performing interstate moving services without legal authority from the Federal Motor Carrier Safety Administration, and did not carry Cargo insurance as required by law.” (Compl.¶ 9.)

In considering similar situations involving challenges to jurisdiction in the internet context, courts have insisted upon more than mere access to the website to sustain specific jurisdiction. For example, in [Young v. New Haven Advocate, 315 F.3d 256 \(4th Cir.2002\)](#), the Fourth Circuit considered whether jurisdiction would lie under Virginia's long arm statute (which is coextensive with due process) based on the posting of allegedly defamatory article about a Virginia prison warden on a Connecticut newspaper's website. The court held that jurisdiction did not lie even though the injury would be felt in Virginia. In so holding, the court distinguished [Calder v. Jones, 465 U.S. 783 \(1984\)](#), in which the Supreme Court sustained the assertion of a California court's jurisdiction over

two Florida residents who had published an allegedly defamatory article in the *National Enquirer*. In that case, the *Enquirer* had hard-copy circulation in California and derived substantial revenue from the state; by contrast, in *Young*, the newspaper had no such hard-copy circulation in [Virginia](#). *Young*, 315 F.3d at 263-64. Recognizing that allowing jurisdiction based solely on access to a website would potentially subject those posting information on the internet to personal jurisdiction in every state, "thus subverting and the traditional due process principles governing a State's jurisdiction over persons outside of its borders," [id. at 263](#), the court held that "something more than posting and accessibility is needed to 'indicate that the [newspapers] purposefully (albeit electronically) directed [their] activity in a substantial way to the forum state.' The newspapers must, through the Internet postings, manifest an intent to target and focus on Virginia readers." *Id.* (alterations in original), citing [Panavision Int'l, L.P. v. Toeppen](#), 141 F.3d 1316, 1321 (9th Cir.1998) (quotation omitted); see also [GTE New Media Services Inc. v. BellSouth Corp.](#), 199 F.3d 1343, 1349 (D.C.Cir.2000) ("[P]ersonal jurisdiction surely cannot be based solely on the ability of District residents to access the defendants' websites, for this does not by itself show any persistent course of conduct by the defendants in the District."); [HY Cite](#), 297 F.Supp.2d at 1166-67 (fact that plaintiff suffered harm in Wisconsin due to access to defendant's website in the state insufficient to sustain *prima facie* showing of jurisdiction).

Although *Young* was decided on due process grounds, [315 F.3d at 261](#), the reasoning is equally applicable to New York's specific jurisdiction statute. By requiring that the defendant "purposely avail himself" of New York law's benefits and privileges, and that there be a "substantial" relationship between the interaction and the injury, [CutCo](#), 806 F.2d at 365, the New York courts' interpretation of [CPLR § 302\(a\)\(1\)](#) substantially incorporates the substantive mandates of due process as applied to the assertion of specific jurisdiction. For example, in *Realuyo v. Villa Abrille*, No. 01 Civ. 10158, [2003 WL 21537754 \(S.D.N.Y. July 8, 2003\)](#), Judge Koeltl held that an internet news service based in the Philippines was not subject to jurisdiction under New York law for posting an allegedly defamatory article on the website of one of its subsidiaries. Noting that the contacts with New York were minimal, and that the news service had not purposely directed its activities at New York, the court held that the "sheer availability of the [allegedly defamatory] article on [defendant's] website, where it can be downloaded in New York at no cost" could not be considered a transaction of business sufficient to sustain jurisdiction under either [CPLR § 302\(a\)\(1\)](#), or due process. *Id.* at *6-7, *10-11.

***5** In the present case, as in *Young* and *Realuyo*, the mere posting of the Black List Report is insufficient to sustain a finding of jurisdiction. The posting was not commercial in purpose, but rather, was in line with the site's overall mission: to provide consumer advocacy and information focusing on moving companies. Access to the posting, as to the website in general, was completely free of charge, and was open to anyone with internet access in any part of the country. The site's content is national in scope: while the site may from time to time have provided information on businesses located in New York, there is no evidence that the site focused on New York businesses in particular. The complained-of posting was presumably one of many such postings in line with the website's overall purpose. Finally, there is no allegation that the defendant advertised in New York or in any way sought out New York viewers. The mere fact that the allegedly defamatory postings may be viewed in New York is thus insufficient to sustain a finding of jurisdiction.

2. Editor's Response to Visitor's Question

The second basis for jurisdiction under [CPLR § 302\(a\)](#) is Walker's posting of commentary in response to a visitor's question about BVL. The posting urged the visitor not to use BVL, claiming that the company was out of compliance with various regulatory

requirements, and pointing to their poor ratings in the areas of vehicle and driver service. (Compl. ¶ 11.) Although this posting is certainly more interactive than the Black List Report, it suffers from many of the same failings as a basis for jurisdiction. As was true of the Black List, it is difficult to see what, if any, "benefit or protection" of New York law that Walker derives from this limited feature of allowing viewers to post comments and questions free of charge. There is once again no allegation that defendant conducts any advertising in New York or specifically solicits comments or questions from any New Yorkers. Rather, the feature allowing viewers to post comments and questions is analogous to an advice column in a newspaper - a sort of "Dear Abby" of moving information - and is equally available to all visitors nationwide. While visitors may request information on New York companies, it is the person posting the question, rather than the responding defendant, who determines the geographical location of the subject company.

It is well established that nationally available websites are often insufficient to sustain jurisdiction, even where they contain an interactive component. *See, e.g., GTE, 199 F.3d at 1349-50* (access to "Internet Yellowpages" website, on which District of Columbia residents could search database, was insufficient to sustain a finding of jurisdiction); *In re Ski Train Fire in Kaprun, Austria, No. MDL 1428, 2004 WL 515534*, at *5 (S.D.N.Y. March 15, 2004) (no jurisdiction under Texas law based on operation of national website which allowed viewers to search database and post job information); *see also Carefirst v. Carefirst Pregnancy Centers, 334 F.3d 390, 399-401 (4th Cir.2003)* (no jurisdiction under Maryland law where defendant's "generally accessible, semi-interactive Internet website [did not] direct electronic activity into Maryland with the manifest intent of engaging in business or other interactions within that state in particular"). In the most closely analogous case, *Hy Cite, 297 F.Supp.2d at 1162-67*, plaintiff brought a defamation suit against the operator of a website on which viewers could post negative comments about various businesses. Noting that "no evidence exists to show that defendant has done anything to target Wisconsin consumers," such as advertise or send unsolicited emails to residents, the court held that the site could not form the basis for specific personal jurisdiction. Such a website, the court noted, "is akin to an advertisement in a magazine with a national circulation; the defendant does not control who views it or responds to it." *Id. at 1164*. The defendant "has not targeted Wisconsin citizens more than the citizens of any other state ... [and] plaintiff has not shown what benefit or privilege from Wisconsin has incurred to defendant through the posting of these complaints." *Id.*

*6 The present case is arguably distinguishable on its facts from *Hy Cite*. There, it was only the visitors to the website, and not the operator of the site, who posted the allegedly defamatory text, and there was no interaction between the viewers and the operator on the subject of the postings. *Id.* at 1165-66. Here, there was both interaction around the posting and contribution to the alleged defamation by the defendant himself. However, these facts do not defeat the plaintiff's failure to allege that Walker in any way sought out New York viewers or focused his comments on New York businesses. Rather, his comments were in response to a question posed by a visitor to the site regarding BVL, which happened to be based in New York. There is thus no colorable claim based on this interaction supporting a finding that the plaintiff "purposefully availed [himself] of the privilege of conducting activities within [New York]," *CutCo, 806 F.2d 365*, simply by responding to a single visitor's question.

3. Donations

The only other fact that plaintiffs assert supports a finding of jurisdiction is that defendant's website solicits donations. The site proclaims, "MovingScam depends on your support. Make a donation today to help with our efforts." (Compl. ¶ 9.) Plaintiffs appear to argue that this automatically leads to a finding of jurisdiction. (Opp. at 7.) While defendant admits that the website requests donations, he asserts that he does not know

of any donations made by New York residents. (Reply at 2.)

Whether or not MovingScam.com received donations from New York residents is irrelevant. While solicitation of donations is unquestionably a business transaction, jurisdiction is only proper under [CPLR § 302\(a\)\(1\)](#) where the cause of action “arises out of the subject matter of the business transacted.” [Citigroup, 97 F.Supp.2d at 564](#); see also [CutCo, 806 F.2d at 365](#) (“[A]n articulable nexus between the business transacted and the cause of action sued upon’ is essential.”, citing [McGowan v. Smith, 52 N.Y.2d 268 \(1981\)](#)). Even assuming that Walker’s website had enjoyed significant donations from New York residents, BVL has not asserted that its injury is “substantially related” to the donations, or indeed that they have any “articulable nexus” to its injury at all. See *id.* Rather, plaintiff states in a conclusory manner that its claim “arises out of defendant’s business activities.” However, the claimed injury resulted not from the putative donations, but from the posting of the allegedly defamatory statements regarding BVL on the Black List and in response the viewer’s inquiry. Any donations that had been received from New York therefore could not serve as the basis for jurisdiction. See, e.g., [Realuyo, 2003 WL 21537754 at *6](#) (website’s business transactions with New York advertisers were unrelated to defamation claim, and therefore could not sustain jurisdiction under New York law); [Hy Cite, 297 F.Supp.2d at 1164-65](#) (single book sale had insufficient nexus to claimed injury to assert specific jurisdiction over defendant in defamation case).

*7 Neither [Hsin Ten Enterprise, 138 F.Supp.2d at 455-57](#), nor [Obermaier v. Kenneth Copeland Evangelistic Ass’n, Inc., 208 F.Supp.2d 1288 \(M.D.Fla.2002\)](#), both cited by plaintiff, is to the contrary. In *Hsin Ten*, the sole licensee of patents for exercise machine sued a competitor for patent and trademark infringement arising out of sales of allegedly infringing exercise machines. In finding that jurisdiction was proper, the court emphasized that “defendants have affiliates who reside in New York, have representatives who have appeared in trade shows in New York, and have sold several Exercise Machines to New York residents. These acts rise to the level of transacting business under [§ 302\(a\)\(1\)](#).” [138 F.Supp.2d at 456](#). Most importantly, the court’s holding hinged on the fact that plaintiff’s trademark infringement claims arose out of the asserted business activities: defendant’s “use and sale” of the Exercise Machines. *Id.*

Similarly, in *Obermaier*, the plaintiff sued to reclaim funds and items donated to a religious organization. The donations were themselves the subject of the litigation, which was brought on behalf of the donor by his receiver. Moreover, the defendant had “solicit[ed] contributions from Florida residents using local television stations in Naples, Florida, as well as internet websites [and had sent] mail into Florida in response to donations by Florida residents.” [208 F.Supp.2d at 1291](#). These contacts with the forum state “relate[d] to the plaintiff’s cause of action involving the solicitation of donations from Florida residents ... and involve[d] continuous acts by which the defendant purposefully availed itself of the privilege of conducting activities within Florida.” [Id. at 1292](#). As the court emphasized, the defendant’s activities were sufficiently sustained and continuous to subject the defendant to general as well as specific jurisdiction in Florida, meaning that even absent the connection between the in-state transactions and the injury claimed, jurisdiction would have been proper. *Id.* See also [Citigroup, 97 F.Supp.2d at 566](#) (finding jurisdiction where “the interaction is both significant and unqualifiedly commercial in nature” and “[t]he cause of action arises from this transaction of business because it is precisely the *bona fides* of these products and services that [plaintiff] challenges”).

In sum, plaintiffs have failed to make out a *prima facie* case for jurisdiction under [CPLR § 302\(a\)\(1\)](#) based on either the Black List, the editorial comment, or the solicitation of donations. With respect to the first two claimed activities, the plaintiff has failed to allege facts showing that the defendant in any way purposely availed himself of the benefits and privileges of conducting business in New York. With respect to the third, plaintiff has

failed to articulate any nexus between the supposed donations and the injury asserted.

Two final issues bear mention. First, because the plaintiff has failed to establish a *prima facie* showing of jurisdiction under New York State law, the Court need not address the issue of due process. See [Bensusan Restaurant Corp. v. King, 126 F.3d 25, 27 \(2d Cir.1997\)](#). Second, the plaintiff has not sought jurisdictional discovery; had it done so, the request would be denied because the plaintiff has failed to make out a *prima facie* case for jurisdiction. Accordingly, the case will be dismissed for lack of personal jurisdiction.

CONCLUSION

*8 Defendant's motion to dismiss pursuant to [Fed.R.Civ.P. 12\(b\)\(2\)](#) for lack of personal jurisdiction under [CPLR § 302\(a\)\(1\)](#) is granted.

SO ORDERED.

S.D.N.Y., 2004.