IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HINDU AMERICAN FOUNDATION, **Plaintiff,** **v.** **SUNITA VISWANATH, ET AL.,** **Defendants.**	Civil Action No. 1:21-CV-01268-APM ORAL HEARING REQUESTED Honorable Amit P. Mehta

DEFENDANT AUDREY TRUSCHKE'S REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT

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TABLE OF CONTENTS

Page

PRELIMINARY STATEMENT 1

LEGAL ARGUMENT 2

I. HAF FAILS TO PLEAD THE EXISTENCE OF A CONSPIRACY TO DEFAME HAF OR PROFESSOR TRUSCHKE'S PARTICIPATION IN ANY SUCH CONSPIRACY 2

II. PROFESSOR TRUSCHKE IS NOT SUBJECT TO PERSONAL JURISDICTION IN THE DISTRICT OF COLUMBIA 7

A. Professor Truschke Is Not Subject to Conspiracy Jurisdiction Under Section 13-423(a)(1) 7

1. HAF Must Plead Conspiracy Jurisdiction with Particularity 7

2. HAF Has not Pleaded with Particularity Professor Truschke's Participation in a Conspiracy to Defame HAF 8

B. Professor Truschke Is Not Subject to Personal Jurisdiction Under Section 13-423(a)(3) for Advising a Student Group Which Was a Member of a Coalition 10

C. Exercising Personal Jurisdiction Over Professor Truschke in this Case Would Violate Due Process 12

D. HAF's Request for Jurisdictional Discovery Should Be Rejected 13

III. HAF HAS NOT PLEADED THAT PROFESSOR TRUSCHKE ACTED WITH ACTUAL MALICE 14

IV. THE COMPLAINT SHOULD BE DISMISSED WITH PREJUDICE BECAUSE AMENDMENT WOULD BE FUTILE 16

CONCLUSION 17

TABLE OF AUTHORITIES

Page(s)

Federal Cases

3M Co. v. Boulter,
842 F. Supp. 2d 85 (D.D.C. 2012) 8, 9, 14

Acosta Orellana v. CropLife Int'l,
711 F. Supp. 2d 81 (D.D.C. 2010) 3, 13

Arbitraje Casa de Cambio, S.A. de C.V. v. U.S. Postal Serv.,
297 F. Supp. 2d 165 (D.D.C. 2003) 1

Bell Atl. Corp. v. Twombly,
550 U.S. 544 (2007) 4, 5

Bell v. United States,
301 F. Supp. 3d 159 (D.D.C. 2018), *aff'd*, No. 18-5115, 2018 WL 6720681
(D.C. Cir. Dec. 17, 2018) 17

Burger King Corp. v. Rudzewicz,
471 U.S. 462 (1985) 12

Companhia Brasileira Carbureto de Calici v. Applied Indus. Materials Corp.,
640 F.3d 369 (D.C. Cir. 2011) 7

Couch v. Verizon Commc'ns, Inc.,
No. 20-CV-2151, 2021 WL 4476698 (D.D.C. Sept. 30, 2021) 3

Edmond v. United States Postal Service General Counsel,
949 F.2d 415 (D.C.Cir.1991) 8, 13, 14

EIG Energy Fund XIV, L.P. v. Petróleo Brasileiro S.A.,
246 F. Supp. 3d 52 (D.D.C. 2017) 8

Farah v. Esquire Mag., Inc.,
863 F. Supp. 2d 29 (D.D.C. 2012), *aff'd sub nom. Farah v. Esquire Mag.*,
736 F.3d 528 (D.C. Cir. 2013) 6

First Chi. Int'l v. United Exch. Co.,
836 F.2d 1375 (D.C. Cir. 1988) 3, 8, 10

GTE New Media Servs. Inc. v. BellSouth Corp.,
199 F.3d 1343 (D.C. Cir. 2000) 11

Halberstam v. Welch,
705 F.2d 472 (D.C. Cir. 1983) 4

Hanson v. Denckla,
357 U.S. 235 (1958)....................12

Harte-Hanks Commc'ns, Inc. v. Connaughton,
491 U.S. 657 (1989)....................15

Heller v. Nicholas Applegate Cap. Mgmt., LLC,
498 F. Supp. 2d 100 (D.D.C. 2007)....................12

Hettinga v. United States,
677 F.3d 471 (D.C. Cir. 2012)....................16

Hustler Magazine, Inc. v. Falwell,
485 U.S. 46 (1988)....................15

Jankovic v. Int'l Crisis Group,
822 F.3d 576 (D.C. Cir. 2016)....................15, 16

Jung v. Ass'n of Am. Med. Colls.,
300. F. Supp. 2d 119, 141 (D.D.C. 2004)....................8

Kormendi/Gardner Partners v. Surplus Acquisition Venture, LLC,
606 F. Supp. 2d 114 (D.D.C. 2009)....................13

Lagayan v. Odeh,
199 F. Supp. 3d 21 (D.D.C. 2016)....................5

Lapointe v. Van Note,
No. 03-CV-2128, 2004 WL 3609346 (D.D.C. Nov. 9, 2004)....................9, 10, 11

Lohrenz v. Donnelly,
350 F.3d 1272 (D.C. Cir. 2003)....................15

Mattiaccio v. DHA Grp., Inc.,
20 F. Supp. 3d 220 (D.D.C. 2014)....................6

Mattwaoshshe v. United States,
No. 20-CV-1317, 2021 WL 3633695 (D.D.C. Aug. 17, 2021)....................13

McFarlane v. Esquire Magazine,
74 F.3d 1296 (D.C. Cir. 1996)....................15

New York Times Co. v. Sullivan,
376 U.S. 254 (1964)....................15

Nunes v. WP Co. LLC,
513 F. Supp. 3d 1 (D.D.C. 2020)....................3

Price Waterhouse v. Hopkins,
490 U.S. 228 (1989)....................16

Roz Trading Ltd. v. Zeromax Group, Inc.,
517 F. Supp. 2d 377 (D.D.C. 2007)....................11

St. Amant v. Thompson,
390 U.S. 727 (1968)....................15

Tavoulareas v. Piro,
817 F.2d 762 (D.C. Cir. 1987)....................16

Trudel v. SunTrust Bank,
223 F. Supp. 3d 71 (D.D.C. 2016)....................5

United States v. Philip Morris Inc.,
116 F. Supp. 2d 116 (D.D.C. 2000)....................13

Wisconsin v. Mitchell,
508 U.S. 476 (1993)....................16

Rules

Federal Rule of Civil Procedure 12....................1

Federal Rule of Evidence 201....................6

Statutes

D.C. Code Section 13-423(a)(1)....................2, 7

D.C. Code Section 13-423(a)(3)....................2, 10, 11, 12

D.C. Code Section 13-423(a)(4)....................12

Defendant Audrey Truschke respectfully submits this reply brief in support of her motion to dismiss Plaintiff's[1] complaint for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2) and for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6). Dkt. 36.

PRELIMINARY STATEMENT

HAF's oppositions to Defendants' motions to dismiss – in particular, HAF's opposition to Professor Truschke's motion to dismiss – confirm that HAF's suit is no more than an attempt to silence HAF's political adversaries. Indeed, HAF appears to have all but abandoned any effort to establish jurisdiction or liability against Professor Truschke, specifically, and scarcely addresses any of the arguments in Truschke's motion to dismiss. Instead, HAF tries to change its story, attempting to shoehorn its claims against Professor Truschke into conspiracy-based theories of personal jurisdiction and liability.[2] Not only does HAF fail to plausibly allege the existence of *any* conspiracy to defame it, its allegations of Professor Truschke's alleged involvement in such a conspiracy is reminiscent of a bad game of "Six Degrees of Kevin Bacon."

HAF's opposition briefs also seek to embark upon a fishing expedition to delay dismissal of this suit, or to ensure that the suit can be brought again with an amended complaint if dismissed. This cannot be allowed. In light of HAF's use of this lawsuit to punish

[1] Capitalized terms not otherwise defined in this brief have the same meanings as in Truschke's memorandum of points and authorities in support of her motion to dismiss the complaint. Dkt. 36-1 ("Truschke Br.").

[2] HAF's attempt to essentially amend its complaint via its opposition briefs is improper. *See Arbitraje Casa de Cambio, S.A. de C.V. v. U.S. Postal Serv.*, 297 F. Supp. 2d 165, 170 (D.D.C. 2003) ("It is axiomatic that a complaint may not be amended by the briefs in opposition to a motion to dismiss.") (citations omitted). However, to show that allowing HAF to amend its complaint would be futile, Professor Truschke addresses HAF's new allegations in this brief as if they had been included in HAF's complaint.

constitutionally-protected speech,[3] as well as the fact that HAF cannot point to any legitimate justification for jurisdictional discovery, this request for jurisdictional discovery and for leave to amend the complaint must be denied.

LEGAL ARGUMENT

I. HAF FAILS TO PLEAD THE EXISTENCE OF A CONSPIRACY TO DEFAME HAF OR PROFESSOR TRUSCHKE'S PARTICIPATION IN ANY SUCH CONSPIRACY

HAF's case against Professor Truschke now appears to rest entirely on HAF's claim that Professor Truschke is part of a nebulous conspiracy to defame HAF.[4] First, HAF claims that Truschke is subject to personal jurisdiction in the District of Columbia under D.C. Code Section 13-423(a)(1) because she "transacted business" in the District by virtue of her participation in the "conspiracy." Dkt. 41 ("Opp.") at 16–18. Next, HAF argues that it has stated a claim for civil conspiracy as to Truschke and the other defendants. Opp. at 21–23. Finally, as to the defamation claims, HAF argues that Truschke is liable for the acts of her co-conspirators, Opp. at 23, and that Truschke's alleged participation in the conspiracy relieves HAF of any obligation to plausibly allege that Truschke made any of the statements at issue with actual malice, Opp. at

[3] It is telling that HAF did not name Al Jazeera or Raqib Hameed Naik (the publisher and writer of the articles at issue in this suit) as defendants. Instead, HAF targeted individuals HAF views as its political opponents, or "haters," as HAF appears to describe them in promotional material for a HAF-sponsored webinar event scheduled for next month. The event is subtitled "How to Sue Your Haters," and promises to "discuss the legal merits of our defamation case, our legal action against UPenn in the aftermath of the DGH conference, and more…" Hindu American Foundation, *HAF Year End Event: The Power of Law*, perma.cc/4799-HZRM (advertising December 2, 2021, online event hosted by HAF and titled: "The Power of Law: How to Sue Your Haters and Other Legal Tools.").

[4] One of HAF's theories of personal jurisdiction against Professor Truschke – what appears to be an agency-based theory under Section 13-423(a)(3) – does not depend on Professor Truschke's participation in a conspiracy to defame HAF. Opp. at 18–20. Section II(B) below explains why this argument fails. HAF's remaining theories of personal jurisdiction and liability with respect to Professor Truschke rely on the existence of a conspiracy and Professor Truschke's participation in that conspiracy.

24–25. But none of these arguments hold water, because HAF fails to plead that any cognizable "conspiracy" even existed, much less that Professor Truschke participated in it. HAF's attempts to recast its claims against Truschke as conspiracy-based fare no better than its original claims against her. And without a conspiracy, HAF has no case against Professor Truschke.

As explained in Truschke's opening brief, HAF's civil conspiracy claim fails for two independent reasons. Truschke Br. at 30–32. First, HAF's conspiracy claim fails because HAF does not adequately plead any underlying tortious behavior—here, defamation. *See Nunes v. WP Co. LLC*, 513 F. Supp. 3d 1, 9 (D.D.C. 2020); *Couch v. Verizon Commc'ns, Inc.*, No. 20-CV-2151, 2021 WL 4476698, at *6 (D.D.C. Sept. 30, 2021). If this Court finds that HAF fails to state a claim for defamation against any Defendant, HAF's conspiracy claim must fall with the defamation claims, as conspiracy without the underlying alleged tort is not actionable. Second, and equally fundamentally, HAF's conspiracy claim cannot survive because HAF fails to plausibly allege the elements of a civil conspiracy. Despite the deluge of additional allegations HAF includes in its opposition brief, HAF still fails to plausibly allege the existence of any agreement involving Professor Truschke to defame HAF.

In its complaint, all HAF offers are "conclusory" allegations completely "devoid of any factual support" regarding Truschke's interactions with the other defendants. *Acosta Orellana v. CropLife Int'l*, 711 F. Supp. 2d 81, 113 (D.D.C. 2010); *see also* Truschke Br. 30–32. In its opposition to Truschke's motion to dismiss, HAF attempts to bolster these allegations by asserting that:

- "Truschke and her co-defendants closely and routinely work together as allies and coalition partners against HAF as a shared adversary," Opp. at 22;
- Truschke and the other defendants "share beliefs and common goals," Opp. at 4;

- Truschke is an advisor to a student organization (Students Against Hindutva Ideology, or "SAHI") which is itself one of "dozens" of member organizations of the Coalition to Stop Genocide in India ("Coalition") alongside organizations affiliated with other defendants,[5] Opp. at 4; Ex. 42 to Decl. of Ryan J. Stonerock in Supp. of Pl. HAF's Opp'ns to Mots. to Dismiss Filed by Defs. ("Stonerock Decl."), Dkt. 39-45; and
- certain other defendants and organizations affiliated with them authored various statements expressing support for Professor Truschke, Opp. at 8–9.

None of these allegations are sufficient – alone or in the aggregate – to plausibly establish a conspiracy. *See also* Ex. 1 to Stonerock Decl., Dkt. 39-4.[6] To the contrary, HAF's arguments only further underscore the degree to which this libel suit is little more than a proxy battle against its perceived political and ideological enemies.

In conspiracy cases, "circumstances of the [alleged] wrongdoing generally dictate what evidence is relevant or available in deciding whether an agreement exists." *Halberstam v. Welch*, 705 F.2d 472, 486 (D.C. Cir. 1983). These circumstances may include "[f]actors like the relationship between the parties' acts, the time and place of their execution, and the duration of the joint activity." *Id.* at 487. But merely alleging "parallel conduct" is not sufficient to plausibly allege a conspiracy. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556–57 (2007).

[5] Absurdly, HAF also claims that Truschke controls the Coalition itself through this attenuated connection. Opp. at 22. This conclusory statement – which HAF makes without alleging any supporting factual allegations – is addressed in Section II(B) below.

[6] Exhibit 1 to the Stonerock Declaration, Dkt. 39-4, is not properly before the Court on a motion to dismiss. HAF's counsel represents that this exhibit represents a "graphic prepared by [HAF's counsel's] firm illustrating" what HAF believes to be "Defendants' relationships with one another and certain connections with Washington, D.C." Stonerock Decl., Dkt. 39-3, ¶ 2. This graphic constitutes legal argument that should be reflected in the body of HAF's brief, not attached as an exhibit purporting to be subject to judicial notice. In any event, the elaborately tangled web that HAF tries to illustrate with this exhibit only illustrates just how desperate HAF is in attempting to link Defendants with one another.

Looking at these factors here, it is clear that any alleged connections or parallel conduct between Professor Truschke and any other defendant are products of overlapping advocacy and political goals; HAF does not allege – or offer any evidence to show – that political agreement constitutes an actionable conspiracy to defame HAF.

Quoting this Court, HAF writes that, "in most civil conspiracy cases, courts are required to infer an agreement from indirect evidence." Opp. at 21 (quoting *Lagayan v. Odeh*, 199 F. Supp. 3d 21, 30 (D.D.C. 2016)). Yet there still must be *some* evidence of an agreement to commit an underlying tort: an "allegation of mere parallel conduct," is not enough; "[n]or are mere conclusory allegations." *Id.* (quoting *Twombly*, 550 U.S. at 557); *see also Trudel v. SunTrust Bank*, 223 F. Supp. 3d 71, 94–95 (D.D.C. 2016). Here, again, HAF's vague allegations amount to nothing more than overlapping political ideology among Defendants. HAF's reliance on *Lagayan* is particularly misplaced. There, this Court found that the plaintiff had adequately alleged that the defendants entered into an agreement to traffic the plaintiff into the United States and force her into unpaid labor. Although the plaintiff did not plead facts to show *direct* evidence of an agreement to traffic her, she plausibly alleged that the defendants worked together to coordinate various legs of her international travel to the United States from the home of one defendant to another. *Lagayan*, 199 F. Supp. 3d 21, 31.

In this case, however, HAF fails to plausibly allege any such facts. At most, HAF alleges that Professor Truschke has some professional familiarity with certain defendants and that HAF is a "common foe" of Defendants, as though that were sufficient to establish a conspiracy. But, in the United States, the First Amendment clearly protects the rights of individuals to engage in vigorous political debate and discussion, to have "common goals," and even to share a "common foe." Opp. at 4, 22. In fact, this conduct is at the heart of the rights to political speech and

association that undergird our democratic institutions. The logical extension of HAF's apparent position is that *anyone* in the United States expressing public opposition to HAF's political views could be a member of this same conspiracy. HAF cites no cases supporting such a sweeping view of conspiracy law. Instead, HAF must allege facts plausible to show that Truschke entered into an agreement with other defendants to make false and damaging statements about HAF. *See Mattiaccio v. DHA Grp., Inc.*, 20 F. Supp. 3d 220, 230 (D.D.C. 2014). HAF has not met this burden, and a review of the *100* exhibits that HAF attaches to its oppositions confirms that HAF could not do so.[7]

Accordingly, this Court should find that HAF has not adequately pleaded Professor Truschke's participation in any conspiracy to defame HAF. In turn: (1) HAF has not stated a civil conspiracy claim against Truschke; (2) Truschke is not subject to personal jurisdiction in this Court under a conspiracy theory of jurisdiction; (3) Truschke is not liable for the acts of any other defendant; and (4) HAF cannot get around its burden to plead and prove by clear and convincing evidence that *Truschke* published defamatory statements with actual malice.

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[7] HAF's request for judicial notice in support of its oppositions claims that, under Federal Rule of Evidence 201(b)(2), "this Court may take judicial notice of publicly available websites, documents and/or information from the Internet because their existence and accuracy cannot be reasonably questioned." Dkt. 39-1 at 2. Crucially, though, a Court may not take judicial notice of a fact for its *truth unless* the fact is (1) "generally known" within the jurisdiction or (2) "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Here, where HAF asks this Court to take blanket judicial notice of 100 exhibits – several from websites which pander in misinformation and whose accuracy Professor Truschke reasonably questions, *see, e.g.*, Ex. 74 to Stonerock Decl., Dkt. 39-77 (OpIndia article), Ex. 77 to Stonerock Decl., Dkt. 39-80 (same) – the Court may only take judicial notice of these documents to show their existence, not for their truth. *See Farah v. Esquire Mag., Inc.*, 863 F. Supp. 2d 29, 35 (D.D.C. 2012), *aff'd sub nom. Farah v. Esquire Mag.*, 736 F.3d 528 (D.C. Cir. 2013) (taking judicial notice of "various internet postings" where the party citing the documents relied on them "not for their truth, but merely to show that those statements were made").

II. PROFESSOR TRUSCHKE IS NOT SUBJECT TO PERSONAL JURISDICTION IN THE DISTRICT OF COLUMBIA

HAF does not even attempt to establish a basis for the exercise of jurisdiction over Professor Truschke from her own actions; instead, HAF rests entirely on its assertions that Professor Truschke is part of a conspiracy with *other* individuals and organizations with connections to this District. This newly concocted theory utterly fails.

A. Professor Truschke Is Not Subject to Conspiracy Jurisdiction Under Section 13-423(a)(1)

In the "Jurisdiction and Venue" section of its complaint, HAF made an offhand reference to "purposeful conduct" by all Defendants in "*conspiring* to publish defamatory statements." Compl. ¶ 17 (emphasis added). In its opposition to Professor Truschke's motion to dismiss, HAF attempts to transform this ambiguous passing reference into the cornerstone of its theory of personal jurisdiction against Truschke. Opp. at 16–18. In doing so, HAF fails to apply the correct standard for conspiracy jurisdiction, neglects to address all elements of conspiracy jurisdiction, and falls well short of carrying its burden regarding the elements it does address. For these reasons, this Court should reject HAF's conspiracy-based theory of personal jurisdiction over Professor Truschke.

1. HAF Must Plead Conspiracy Jurisdiction with Particularity

HAF claims that it has carried its burden in pleading conspiracy jurisdiction because it "made a prima facie showing of this separate theory of personal jurisdiction." Opp. at 17. However, HAF misstates the applicable standard. While HAF claims it need only make a *prima facie* showing, the case law clearly holds that its burden is much higher. This burden requires significantly more than just a passing reference to conspiracy jurisdiction in HAF's complaint. Contrary to HAF's assertions, a plaintiff alleging conspiracy jurisdiction in D.C. must actually plead jurisdictional facts "*with particularity*." *Companhia Brasileira Carbureto de Calici v.*

Applied Indus. Materials Corp., 640 F.3d 369, 372 (D.C. Cir. 2011) (emphasis in original) (citations omitted). Thus, while a plaintiff alleging personal jurisdiction *not* founded on a conspiracy need only make "a *prima facie* showing of pertinent jurisdictional facts," *First Chi. Int'l v. United Exch. Co.*, 836 F.2d 1375, 1378 (D.C. Cir. 1988) (citation omitted), a plaintiff alleging conspiracy jurisdiction must make an "unusually particularized pleading [of the elements of conspiracy jurisdiction]," *3M Co. v. Boulter*, 842 F. Supp. 2d 85, 112 (D.D.C. 2012) (alteration in original) (quoting *Edmond v. United States Postal Service General Counsel*, 949 F.2d 415, 428 (D.C.Cir.1991)); *see also EIG Energy Fund XIV, L.P. v. Petróleo Brasileiro S.A.*, 246 F. Supp. 3d 52, 90–91 (D.D.C. 2017). This particularity requirement is "strictly enforced . . . in light of concerns that plaintiffs will use the doctrine [of conspiracy jurisdiction] to circumvent the constitutional boundaries of the long–arm statute." *Jung v. Ass'n of Am. Med. Colls.*, 300. F. Supp. 2d 119, 141 (D.D.C. 2004) (citation omitted).

The applicable standard for surviving a motion to dismiss under a conspiracy jurisdiction theory – that is, pleading the existence of a conspiracy *with particularity* – is clear from the cases HAF itself cites in support of its conspiracy jurisdiction argument. *See* Opp. at 16–18. But under *either* standard, HAF has not adequately pleaded conspiracy jurisdiction.

2. HAF Has not Pleaded with Particularity Professor Truschke's Participation in a Conspiracy to Defame HAF

To survive a 12(b)(2) motion attacking its allegation of conspiracy jurisdiction, a plaintiff must plead with particularity: "(1) the existence of a civil conspiracy; (2) the defendant's participation in the conspiracy; and (3) an overt act by a coconspirator within the forum, subject to the long–arm statute, and in furtherance of the conspiracy." *3M Co.*, 842 F. Supp. 2d at 112 (citation omitted). Thus, a plaintiff who alleges that a defendant is subject to conspiracy

jurisdiction must plead with particularity facts supporting a civil conspiracy, which itself requires specific facts supporting the alleged tort on which the conspiracy is based. *Id.*

Lapointe v. Van Note is directly on point. No. 03-CV-2128, 2004 WL 3609346 (D.D.C. Nov. 9, 2004). In *Lapointe*, a plaintiff brought suit in the District Court for the District of Columbia against a conservation organization, the organization's Executive Vice President (VP), and a non-resident nonprofit that published an allegedly defamatory article written by the VP. *Id.* at *1–2. The plaintiff alleged that the nonprofit was subject to conspiracy jurisdiction, claiming that the VP's article was the product of "a campaign designed to have the plaintiff removed from his position" with the United Nations. *Id.* at *1, *7. The district court granted the nonprofit's motion to dismiss for lack of personal jurisdiction. *Id.* at *8. The court found that the only facts that would support plaintiff's conspiracy jurisdiction theory – the nonprofit's membership in the conservation organization and its publication of the article – "certainly [did] not rise to the level of a demonstrated common plan to defame the plaintiff." *Id.*

HAF's conclusory allegations attempting to connect Truschke to her alleged co-conspirators for purposes of defaming HAF are even more tangential than they were in *Lapointe*. As discussed above in Section I, HAF has provided *no* factual allegations that could plausibly show that Professor Truschke participated in any conspiracy to defame HAF. Quite the contrary, HAF's apparent theory of jurisdiction here ultimately rests on its assertion that Professor Truschke is one of several advisors to a student organization (SAHI), that is, in turn, a member of the Coalition – a conglomerate made up of "dozens" of organizations – which HAF asserts is based in D.C. *See* Opp. at 4, 17–18; Ex. 42 to Stonerock Decl., Dkt. 39-45. Simply put, this six-degrees-of-separation argument stretches the bounds of credulity. Taken to its logical end, this theory of jurisdiction would subject anyone who has any distant and tangential

connection to an organization with a D.C. phone number to the jurisdiction of the D.C. courts. This is exactly the sort of argument that *Lapointe* rejected.

Like the plaintiff's jurisdictional allegations in *Lapointe*, HAF's controverted conspiracy allegation "does not rise to the level of a demonstrated common plan to defame the plaintiff." *Lapointe*, 2004 WL 3609346, at *8. For this reason, this Court should reject HAF's attempt to establish personal jurisdiction over Professor Truschke based on this attenuated theory of conspiracy jurisdiction.

B. Professor Truschke Is Not Subject to Personal Jurisdiction Under Section 13-423(a)(3) for Advising a Student Group Which Was a Member of a Coalition

In a section of HAF's opposition containing no citations to legal authority, HAF claims that Professor Truschke is subject to personal jurisdiction in the District under D.C. Code Section 13-423(a)(3) because she allegedly "*caused* the D.C.-based Coalition's statements in the Second Story." Opp. at 19 (emphasis added). Under Section 13-423(a)(3), a "District of Columbia court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's . . . causing tortious injury in the District of Columbia by an act or omission in the District of Columbia." HAF does not allege any facts to show how Professor Truschke somehow "caused" the Coalition's statements. Opp. at 19. As discussed above, HAF alleges no more than a tangential connection between Professor Truschke and the Coalition. And HAF does not allege anything to plausibly establish that Truschke had control of SAHI, or that SAHI had any control over the Coalition. Additionally, because HAF cites no legal authority in this paragraph, it is further unclear how HAF believes this alleged connection impacts the jurisdictional analysis.

To survive a motion to dismiss, "a plaintiff must make a *prima facie* showing of the pertinent jurisdictional facts." *First Chi. Int'l*, 836 F.2d at 1378. "Conclusory statements and

intimations" do not suffice. *GTE New Media Servs. Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1349 (D.C. Cir. 2000). Additionally, a plaintiff does not make the required *prima facie* showing by "parrot[ing] the relevant statutory language [and] proffering no factual allegations." *Roz Trading Ltd. v. Zeromax Group, Inc.*, 517 F. Supp. 2d 377, 387 (D.D.C. 2007).

For purposes of D.C. Code Section 13-423(a)(3), the actions of the Coalition can only be considered the acts of Professor Truschke if the Coalition was acting as Truschke's agent. *See Lapointe*, 2004 WL 3609346, at *6 ("[I]f [the individual] was not [the organization's] agent, this Court cannot conclude that [the individual's] actions can be considered as acts of [the organization] for the purpose of exercising personal jurisdiction over [the organization] under the long–arm statute.").

HAF has failed to make a *prima facie* showing of facts supporting this Court's jurisdiction over Professor Truschke under this theory. Crucially, HAF has not alleged – and cannot plausibly allege – that the Coalition or any other entity acted as Professor Truschke's agent. By simply stating that Professor Truschke "caused the D.C.-based Coalition's statements," Opp. at 19, HAF "literally parrots the relevant statutory language, proffering no factual allegations whatsoever" in support of its allegation of personal jurisdiction,[8] *Roz Trading Ltd.*, 517 F. Supp. 2d at 387.

Because HAF has failed to make a *prima facie* showing of facts supporting personal jurisdiction – indeed, it did not even attempt to make this showing – HAF has not carried its

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[8] HAF also claims without support that "Truschke and her co-defendants caused the Defamatory Statements to be published and made, and/or republished, with actual malice." Opp. at 15. The bare assertion that Truschke could have *caused* a massive news outlet such as Al Jazeera to publish specific articles is particularly ludicrous, especially given that HAF named neither Al Jazeera nor Raqib Hameed Naik (the author of the articles) as defendants in this case.

burden in establishing this Court's jurisdiction over Professor Truschke under Section 13-423(a)(3).[9]

C. Exercising Personal Jurisdiction Over Professor Truschke in this Case Would Violate Due Process

Under either theory it advances, HAF's effort to establish a basis for personal jurisdiction over Professor Truschke fails, because exercising jurisdiction over Truschke would violate the Due Process Clause of the United States Constitution. The Due Process Clause requires that "[j]urisdiction is [only] proper . . . where 'actions by the defendant *himself*' establish[] a 'substantial connection' with the forum." *Heller v. Nicholas Applegate Cap. Mgmt., LLC*, 498 F. Supp. 2d 100, 109 (D.D.C. 2007) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985)). "The unilateral activity of those who claim some relationship with a nonresident defendant" cannot support personal jurisdiction. *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

Subjecting Professor Truschke to jurisdiction in this Court based on statements made by the Coalition or another defendant would represent an unconstitutional attempt to establish personal jurisdiction based on "unilateral activity" of a third party. *Hanson*, 357 U.S. at 253. Such a tenuous connection between Professor Truschke and the conduct for which she would be subject to this Court's jurisdiction under either of these theories cannot support personal jurisdiction from a Due Process perspective. There are simply "no actions by the defendant [*her*]*self*" in the District that would support personal jurisdiction. *Heller*, 498 F. Supp. 2d at 109 (citation omitted).

Even if this Court found that HAF adequately pleaded personal jurisdiction under a conspiracy jurisdiction theory or under Section 13-423(a)(3), it still cannot exercise jurisdiction

[9] Notably, HAF does not even address Truschke's arguments that HAF could not satisfy the requirements of Section 13-423(a)(4) of the Long-Arm Statute, *see* Truschke Br. at 14–18, and has therefore abandoned that argument.

over Professor Truschke. Doing so would cast an impermissibly wide net of personal jurisdiction. The Court should dismiss HAF's claims against Truschke for lack of personal jurisdiction.

D. HAF's Request for Jurisdictional Discovery Should Be Rejected

HAF's request for jurisdictional discovery confirms that HAF has no facts to satisfy its burden as to personal jurisdiction. Its request to fish for such facts should be rejected. Jurisdictional discovery is permissible only where a plaintiff can demonstrate that it can supplement its allegations of jurisdiction through discovery. *See Kormendi/Gardner Partners v. Surplus Acquisition Venture, LLC*, 606 F. Supp. 2d 114, 120 (D.D.C. 2009). To make this demonstration, a plaintiff must make a "detailed showing of what discovery it wishes to conduct or what results it thinks such discovery would produce." *Id.* (quoting *United States v. Philip Morris Inc.,* 116 F. Supp. 2d 116, 130 n.16 (D.D.C. 2000)). A court should deny a plaintiff's request for jurisdictional discovery where that request is based on the plaintiff's mere speculation that facts pertinent to the jurisdictional analysis might exist. *See Mattwaoshshe v. United States*, No. 20-CV-1317, 2021 WL 3633695, at *9 (D.D.C. Aug. 17, 2021) (denying request for jurisdictional discovery where request was "based on speculation that discovery would reveal" certain acts sufficient to establish jurisdiction).

Here, HAF asserts that it needs jurisdictional discovery, but fails to identify a single, non-speculative unknown "fact" that would materially alter this Court's jurisdictional analysis. Opp. at 20–21. *See Orellana*, 740 F. Supp. 2d at 40 ("[P]laintiffs merely seek information . . . that even if firmly established would not serve as a basis for this Court having personal jurisdiction over [defendant]."). HAF cites *Edmond v. U.S. Postal Service General Counsel* for the proposition that "[i]t is an abuse [of] discretion to deny jurisdictional discovery where a plaintiff has alleged: (1) the existence of a conspiracy, (2) the nonresident's

participation, and (3) an injury-causing act of the conspiracy within the forum's boundaries." Opp. at 20 (citing *Edmond*, 949 F.2d at 425). But *Edmond* states that a plaintiff must *specifically* allege these facts, which HAF has not done here. *Edmond*, 949 F.2d at 425.

Like the plaintiff's "colorful characterization" that the defendants had trapped it in the "web" of defendants' allegedly defamatory scheme in *3M v. Boulter* (a claim the *3M* court rejected), 842 F. Supp. 2d at 119, HAF's bare allegations of Defendants' "deci[sion] to target HAF with a campaign of lies and false statements" is mere speculation that falls well short of the detailed showing required for jurisdictional discovery.[10] Opp. at 10. And aside from idle speculation about when Professor Truschke first learned of the news articles at issue in this case, HAF does not appear to dispute any of the jurisdictional facts Truschke set forth in her declaration.

Simply put, HAF provides no basis for this Court to delay the dismissal of this case. This Court should therefore deny HAF's request for jurisdictional discovery.

III. HAF HAS NOT PLEADED THAT PROFESSOR TRUSCHKE ACTED WITH ACTUAL MALICE

After disposing of the conspiracy claim addressed in Section I, HAF's defamation claim against Professor Truschke falls apart completely. Indeed, all that remain are (1) a half-hearted assertion that Professor Truschke could have reviewed public records that HAF claims "establish the truth," and (2) an argument that the Court *may* "consider Truschke's ill will towards HAF to the extent it shows a willingness to publish falsehoods of and concerning HAF." Opp. at 24, 26. These arguments both fail, and HAF's defamation claim against Truschke fails with them.

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[10] HAF's request for jurisdictional discovery also appears to be an attempt at intimidation in itself. Most of SAHI's student members are anonymous, yet HAF seeks information and documents regarding Truschke's "activities . . . in connection with SAHI's membership." Opp. at 21. This request in particular threatens to extend the harm of this lawsuit beyond Professor Truschke to students who are members of SAHI.

HAF appears to concede that it is "at least a limited purpose public figure" for purposes of this suit. Opp. at 24. Therefore, HAF is required to show that Professor Truschke acted with actual malice when she allegedly defamed HAF: that is, that she acted "with knowledge that [the statement] was false or with reckless disregard of whether it was false or not." *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 52, 56 (1988) (quoting *Sullivan*, 376 U.S. at 279–80). HAF urges this Court to impose a different actual malice standard that would effectively gut existing caselaw.

First, HAF's references to "extensive public records" that it alleges "establish the truth" are irrelevant to actual malice. Opp. at 24. Even assuming these records were relevant to the substance of Professor Truschke's statements (which does not appear to be the case), in the absence of "obvious reasons to doubt" the truth of her statements, Professor Truschke had no obligation to find or review the records HAF references. *Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 668 (1989) (citation omitted)*; see also id.* ("[F]ailure to investigate before publishing, even when a reasonably prudent person would have done so, is not sufficient to establish reckless disregard."); *St. Amant v. Thompson*, 390 U.S. 727, 733 (1968) ("Failure to investigate does not in itself establish bad faith" (citation omitted)); *Lohrenz v. Donnelly*, 350 F.3d 1272, 1285 (D.C. Cir. 2003) ("Even where doubt-inducing evidence could be discovered, a publisher may still opt not to seek out such evidence and may rely on an informed source, so long as there is no 'obvious reason to doubt' that source") (quoting *McFarlane v. Esquire Magazine*, 74 F.3d 1296, 1305 (D.C. Cir. 1996)).

Second, HAF appears to urge a chicken-and-egg approach to considering animus or "ill will" to establish actual malice. Opp. at 26. HAF cherry-picks a line from *Jankovic v. International Crisis Group* and concludes that "the Court may consider Truschke's ill will

towards HAF to the extent it shows a willingness to publish falsehoods of and concerning HAF." *Id.* (citing *Jankovic v. Int'l Crisis Group*, 822 F.3d 576, 590 (D.C. Cir. 2016)). This conclusion overstates *Jankovic*. *Jankovic* cautions that the *only* time "evidence of ill will or bad motive" may be "suggestive of actual malice" is where it is "also probative of a 'willingness to publish *unsupported allegations*.'" *Jankovic*, 822 F.3d at 590–91 (emphasis in original) (citing *Tavoulareas v. Piro*, 817 F.2d 762, 796 (D.C. Cir. 1987)). *Tavoulareas*, in turn, clarifies that a scenario with "evidence of managerial pressure to produce sensationalistic or high-impact stories *with little or no regard for their accuracy* would be probative of actual malice." *Tavoulareas,* 817 F.2d at 796–97. Clearly this is not the case here, where HAF has not plausibly alleged any facts showing that Professor Truschke made statements without regard for their accuracy. Remarkably, the remaining cases HAF cites on this point involve enforcement of a hate crime statute and a gender discrimination case. Opp. at 25 (citing *Wisconsin v. Mitchell*, 508 U.S. 476, 490 (1993); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251–52 (1989)). Neither case involves a defamation claim, and neither has any bearing on what HAF must show at the pleading stage to establish actual malice.

HAF fails to state a claim for defamation, for the reasons set forth in Professor Truschke's opening brief and here. This Court should accordingly dismiss HAF's defamation claim with prejudice.

IV. THE COMPLAINT SHOULD BE DISMISSED WITH PREJUDICE BECAUSE AMENDMENT WOULD BE FUTILE

HAF's claims against Professor Truschke should be dismissed with prejudice because no amendment can cure their deficiencies—in this Court or anywhere. Where amendment would be futile, a district court may deny a plaintiff's request to amend its complaint. *See Hettinga v. United States*, 677 F.3d 471, 480 (D.C. Cir. 2012) (affirming district court's denial of plaintiffs'

request to supplement their complaint where proposed amendments would have been futile); *Bell v. United States*, 301 F. Supp. 3d 159, 165 (D.D.C. 2018), *aff'd*, No. 18-5115, 2018 WL 6720681 (D.C. Cir. Dec. 17, 2018) (denying as futile plaintiff's motion to amend her complaint where proposed amended complaint was "substantially similar to the original pleading" and suffered "its same defect").

HAF's amendment here would be futile. Through its opposition brief, HAF has already essentially taken the liberty of amending its complaint. The new allegations in HAF's opposition brief accomplished nothing beyond inundating Defendants and this Court with paper. HAF will only do the same if given the opportunity to amend its complaint.

CONCLUSION

HAF's suit against Professor Truschke cannot survive the pleading stage, both because this Court does not have personal jurisdiction over Truschke and because HAF fails to state a claim against her. More broadly, this suit is a blatant attempt by HAF to intimidate, distract, and punish its political rivals. This suit cannot be permitted to proceed. For all of the reasons set forth in Professor Truschke's opening brief and above, the Court should dismiss HAF's complaint with prejudice for both lack of personal jurisdiction and failure to state a claim.

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Respectfully submitted,

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