UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HINDU AMERICAN FOUNDATION Plaintiff, v. **SUNITA VISWANATH; RAJU RAJAGOPAL; RASHEED AHMED; JOHN PRABHUDOSS; AUDREY TRUSCHKE; AND DOES 1-20,** Defendants.	**Civil Action No. 1:21-cv-01268-APM**

OPPOSITION TO DEFENDANT RASHEED AHMED'S MOTION TO DISMISS

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I. INTRODUCTION

Plaintiff Hindu American Foundation ("HAF") hereby opposes Defendant Rasheed Ahmed's ("Ahmed") motion to dismiss. HAF has sued Ahmed and his co-defendants Sunita Viswanath ("Viswanath"), Raju Rajagopal ("Rajagopal"), John Prabhudoss ("Prabhudoss"), and Audrey Truschke ("Truschke") (collectively, "Defendants") for defamation and civil conspiracy. For the reasons stated herein, the Court should deny Ahmed's motion in its entirety.

II. STATEMENT OF FACTS

A. HAF is a D.C.-based non-profit dedicated to education and advocacy

HAF has been registered as a non-profit corporation in the District of Columbia ("D.C." or the "District") since 2011 and is headquartered in D.C. (Complaint, ¶7; Ex. 3-4). HAF's D.C. location is publicly identified and readily available on HAF's website, and in its public Form 990 Tax Forms and D.C. corporate registration. (Complaint, ¶¶37-39; *see e.g.*, Ex. 3-7; Doc. 35, fn. 30; Doc. 35-3, ¶4; Doc. 5-6; Doc. 37-2, ¶¶4, 6-9; Doc. 37-4, 37-6, 37-7, 37-8, 37-9).

HAF is an independent, non-partisan and non-profit American organization that has no affiliation or ties to any organizations or political parties in the United States or abroad. (Complaint, ¶¶7, 19). HAF is committed to educating the public about Hindus and Hinduism and advocating for policies and practices that ensure the well-being of all people and the planet. (*Id.*). HAF works directly with educators and journalists to ensure accurate understanding of Hindus and Hinduism, and with policymakers and key stakeholders to champion issues of concern to Hindu Americans, including defending civil and human rights and protecting all living beings. (*Id.*).

As a 501(c)(3) non-profit under the Internal Revenue Code, HAF is a regulated advocacy group dedicated to a charitable purpose. (*Id.*). Information about every dollar spent by HAF is

publicly available, including but not limited to, on HAF's own website, the IRS website, and on GuideStar.org, a watchdog platform regarding charities. (*Id*., ¶¶37-39). HAF's website has a page specifically dedicated to HAF's financials, publicly disclosing its Form 990s, Audited Financial Statements, and also offering reports on "Your Dollars in Action," a video regarding its Annual Report, more recent editions of the Semi-Annual Newsletter, and a Statement on Grants Issued ensuring compliance with the Office of Foreign Assets Control (OFAC) of the US Department of the Treasury. (*Id.*). HAF's financials have been annually reviewed by a third party controller and audited by a third party accounting firm for the past five (5) years. (*Id.*). HAF has proudly been awarded the 2021 Platinum Seal of Transparency, the highest level of recognition offered by GuideStar, for HAF's extensive reporting on contact and organizational information, in-depth financial data, qualitative metrics about goals, strategies, and capabilities, and quantitative results and progress towards achieving HAF's mission. (*Id.*, ¶39).

B. Defendants Ahmed, Viswanath, Rajagopal, and Prabhudoss are controlling officers of D.C. entities that work closely together with Defendant Truschke, as coalition partners, to further a shared agenda against HAF

1. Ahmed – Founder and Executive Director of D.C. entity, IAMC

Ahmed is a founder and the Executive Director of Indian American Muslim Council ("IAMC"), an entity organized under the laws of this District with a registered agent located at 1100 H Street, N.W., Suite 840, Washington, D.C., 20005. (Complaint, ¶7; Ex. 8-10). IAMC holds itself out as the "largest Washington, DC based advocacy organization of" its kind, with a mission and objectives to advocate and promote certain alleged values and policies. (Ex. 11). Ahmed publicly lists "Executive Director at [IAMC]" as his primary professional title and fulltime position. (Ex. 8). In a public letter on IAMC's website to the Editor of the *Sunday Guardian Live* ("SGL"), dated February 10, 2021, concerning an article entitled, "*Chicago's*

Indian American Muslim Council doth protest too much," (the "SGL Article") Ahmed stated: "I am writing to point out the lies, fallacies and ludicrous distortions in the article about **IAMC, the organization that I represent**…" (Ex. 12-13) (emphasis added). Ahmed further wrote: "[I]t is **not 'Chicago's' IAMC. IAMC is registered in Washington, D.C.**" (Ex. 12) (emphasis added).

IAMC regularly hosts (often with Hindus for Human Rights) events and briefings from, within, and/or tied to this District, and also regularly issues and/or disseminates reports, publications, and/or press releases from and/or connected to this District, including but not limited, on its website and Twitter account. (Ex. 14-23). IAMC has an interactive website, which is available 24 hours a day to the public, including D.C. residents, and which solicits and accepts donations, newsletter subscriptions, volunteers, and visitors to join IAMC in its mission and activities, including in D.C. (Ex. 24-28).

2. Viswanath and Rajagopal - Founders and directors of D.C. entity, HfHR

Defendants Viswanath and Rajagopal are co-founders and directors of Hindus for Human Rights ("HfHR"), an entity organized under the laws of this District with a registered agent located at 1717 N. Street NW, Suite 1, Washington, D.C., 20036. (Complaint, ¶¶8-9; Ex. 29-31). HfHR's corporate records identify Viswanath as "Governor" at the same D.C. address. (Ex. 32). HfHR has required that potential employee candidates "must be based in Washington, D.C. or willing to move there." (Ex. 33). HfHR regularly hosts (often with IAMC) events and briefings from, within, or tied to this District, and also issues reports and/or press releases from or connected to this District. (Ex. 16-19, 34). HfHR has an interactive website, which is available 24 hours a day to the public, including D.C. residents, and which solicits and accepts donations, newsletter subscriptions, volunteers and visitors to join HfHR in its mission and activities, including in D.C. (Ex. 35-39).

3. Prabhudoss – Chairman of D.C. entity, FIACONA

Defendant Prabhudoss is the chairman of the Federation of Indian American Christian Organizations ("FIACONA"), a "Washington DC based" organization with a D.C. address and phone number: 110 Maryland Ave M NE Suite 303, Washington, D.C., 20002, (202) 738-4704. (Complaint, ¶11; Ex. 40-41).

4. Close ties and partnership with Defendant Truschke through a D.C.-based Coalition and additional contacts with this District

Ahmed, Viswanath, Rajagopal, and Prabhudoss are closely related and regularly work together with Defendant Truschke, an outspoken and controversial professor with whom they share beliefs and common goals (collectively, "Defendants"). Together, Ahmed, Viswanath, Rajagopal, and Prabhudoss control, operate, and/or act on behalf their affiliated D.C.-based organizations—HfHR, IAMC, and FIACONA— to further their shared agenda with Truschke, as partners and members of the purported Coalition to Stop Genocide in India (the "Coalition"). (Complaint, ¶¶2, 20).

IAMC, HfHR and FIACONA are members of the Coalition.[1] (Complaint, ¶20). Truschke and IAMC's Advocacy Director (Ajit Sahi, who is based in D.C.) both serve on the Board of Advisors for Students Against Hindutva Ideology ("SAHI"), which is also a member of the Coalition. (Complaint, ¶21; Ex. 14, 42, 44-47). Defendants have a controlling interest in the Coalition and had authority to cause the Coalition's acts and statements at issue in this lawsuit. (Complaint, ¶¶20, 28). The Coalition holds itself out as a D.C.-based organization, listing a D.C. telephone number on its website: (202) 599-7718. (Ex. 48). In addition, Prabhudoss (FIACONA)

[1] *See* Ex. 42 (listing HfHR, IAMC and SAHI as members of the Coalition); Ex. 43 (listing FIACONA as a member of the Coalition Against Genocide ("CAG")); Complaint, ¶33(b) (Truschke's statement confirming that the Coalition Against Genocide was an "earlier version" of the Coalition). References to the "Coalition" include both the Coalition and CAG.

and Rajagopal (HfHR) also serve as co-chairs for the India Working Group of the International Religious Freedom Roundtable (the "Roundtable"), which meets regularly in Washington, D.C. (Complaint, ¶20; Ex. 49-50).

5. Defendants' close ties to non-party Raqib Hameed Naik

Non-party Raqib Hameed Naik ("Naik") is a journalist, who also has close and ongoing connections with Defendants, speaking at public D.C. events organized by IAMC and HfHR, and serving on IAMC's executive team. (Complaint, ¶22; *see e.g.*, Ex. 51-54). Naik is a regular contributor to Al Jazeera, which is registered to do business in this District and has a D.C. bureau with the most correspondents of all of its U.S. bureaus. (Ex. 55-57). Naik also caused the defamatory stories at issue in this case to be reported from "Washington, D.C.". (Ex. 58-59).

C. In retaliation for HAF's perceived involvement in reports criticizing their own acts, Defendants conspired to target, defame, and cause injury to HAF within this District

1. Defendants are coalition partners and close allies in their advocacy against HAF

Defendants dislike the political party currently in power in India (which is often labeled a "Hindu nationalist" party), and have political disagreements with the Indian government, especially with respect to its alleged treatment of Muslims and other religious minorities. Defendants have aligned themselves together in their outspoken criticism of groups whom they perceive to be "pro-Indian government" and "pro-Hindu", particularly HAF. (Complaint, ¶4).

Defendants are coalition partners and close allies who are publicly and inextricably intertwined and associated with one another in a common advocacy and strategy against such "pro-Hindu"/"pro-Indian government" groups. As part of this strategy, Defendants have a documented history of collectively attacking and disparaging HAF as a shared adversary. (Complaint, ¶2; Ex. 60-63). Defendants have uniformly spread mistruths about HAF, attacked

HAF, and accused it of being a purported Hindu supremacist group, in an effort to encourage discrimination against HAF and impede its ability to effect change in accordance with HAF's guiding principles. (Complaint, ¶2; Ex. 58-59, 64-65).

In the weeks and months leading up to the publication of the Al Jazeera articles in April 2021, Defendants and their shared belief system were facing serious public scrutiny.

2. The *Newsweek* Article

In December 2020, *Newsweek* reported in an article, entitled "*COVID Relief Funds went to Violent Extremists*" that "[IAMC], an anti-Hindu Islamist group with alleged ties to SIMI, a banned terrorist organization in India, was given $1,000 of taxpayers' money" and stating: "There has to be a better system. It simply cannot be the case that the government is forced to subsidize the work of radicals committed to violence and hate." (Ex. 66-67).

In response, Ahmed authored several heated public letters, as IAMC's Executive Director, to *Newsweek*, calling the article a "defamatory and libelous piece", and effectively blaming HAF for the article. HAF had nothing to do with the article. An IAMC post accused HAF of entering "into a joint effort with [Middle East Forum ("MEF"), the employer of the author of the *Newsweek* article,] to target Muslim organizations in the US", attacking *Newsweek*'s citation to a 2013 report by HAF as a basis for the article, and falsely describing HAF as an alleged "US-based Islamophobic organization". (Ex. 12, 67-70).

Viswanath and HfHR were the first to comment on the *Newsweek* article, confirming that IAMC is HfHR's "closest organizational partner", proclaiming that IAMC "is not anti-Hindu", and demanding that *Newsweek* retract this "outrageous allegation". (Ex. 66). As IAMC's close partners and allies, these allegations directly implicate Viswanath, her co-defendants and their respective organizations—none of whom wish to be publicly linked to a "violent extremist" anti-

Hindu Islamist group with ties to a terrorist organization. Such an allegation as to one member of Defendants' close-knit group affects the group and their respective entities as a whole, implicating each one of them as being either a violent extremist anti-Hindu Islamist group themselves or being a close partner to one.

3. The SGL Article

On February 10, 2021, as mentioned in Section II.B.1. above, Ahmed authored a letter to SGL on IAMC's website, about the purported "lies, fallacies and ludicrous distortions" in the SGL Article. (Ex. 12). Among other things, the SGL Article includes the subheading, "*Besides IAMC's naked anti-Hinduism, there is no denying that the organization has forged allegiances with Islamists, including extremists with ties to murderous terrorist groups*". (Ex. 12-13). In a companion piece to Ahmed's letter, a February 9, 2021 press release on IAMC's website accused HAF of "visibly collaborating with MEF" in an "attack against" Defendants, namely "IAMC and its coalition partners" and/or its "allies". (Ex. 62).

4. Public Outcry and Student Criticism of Truschke at Rutgers

On January 7, 2021, Truschke tweeted an image of the Indian flag at the scene of the Capital Hill insurrection, and the statement: "There were a number of Hindu Right folks there [at the riot]." (Ex. 71). There were reports that the flagbearer was not Hindu, and Truschke faced intense backlash for spreading misinformation and creating a dangerous environment for Hindus by falsely linking Hindus to white supremacy and violence. (Ex. 72-74). In a January 19, 2021 open letter on www.indiafacts.org to Rutgers administrators about Truschke's Twitter post and her "provocative social media activity targeting Hindus", non-party Dr. Ramesh Rao described Truschke as someone who "has become well-known for her social media posts mocking, deriding, provoking and needling Hindus" and is "a flag-bearer for anti-Hindu activism." (Ex.

75).

In March 2021, a Hindu student group, Hindus on Campus, called Truschke out for anti-Hindu remarks, hatred, bigotry and racism against Hindus and demanded that she be prohibited from teaching courses involving materials related to Hinduism. (Ex. 77). Among other things, the group accused Truschke of: creating an unsafe environment for Hindu students; spreading misinformation during the Capital Riots; accusing the Bhagavad Gita (a famous and sacred Hindu text) of "[r]ationaliz[ing] mass slaughter"; comparing a gang rape case in India to "an incident in the sacred epic Mahabharata and [leading] readers to conclude that Hinduism endorses 'Rape Culture' and misogyny"; calling Hindu Gods "Misogynistic Pig[s"]; portraying Hindus as bizarre and devoid of scientific acumen; endorsing controversial burnings of sacred Hindu religious texts; portraying Hindu Society as "sex obsessed" and lustful; and "brush[ing] away the trauma inflicted on Hindus and the people of India by Mughal king Aurangzeb, claiming that such numbers are exaggerated" although "[r]eputable sources have demonstrated that Aurangzeb enslaved and murdered 4.6 million Hindus." (Ex. 72, 76; *see also* Ex. 77, stating "Truschke has been receiving a lot of criticism on social media for her penchant for demonizing Hindus. Twitter users have been trending #RacistRutgers…, calling out [Truschke] for her 'hatred, bigotry and racism against Hindus.")

In response, Defendants caused HfHR and IAMC to sign a public letter to Truschke's employer in support of Truschke and aggressively advocating for their shared views. (Complaint, ¶20; Ex. 78-79). On or around April 16, 2021, Viswanath and Rajagopal authored an additional public declaration of support for Truschke on TheWire.in, which IAMC republished on its website on April 17, 2021. (Complaint, ¶20; Ex. 30, 80). HfHR's website has a "[HfHR] in the Press" page, which has a category of press items dedicated to Truschke, entitled, "SOLIDARITY

WITH DR. AUDREY TRUSCHKE." (Ex. 81).

Viswanath is also a co-founder and executive board member of Sadhana: Coalition of Progressive Hindus, and has used this additional "coalition" to publicly support Truschke, lend Truschke an additional speaking platform, partner with IAMC, and disparage HAF. (Complaint, 21; Ex. 82-85). In March 2021, Viswanath caused Sadhana to publish a further statement of public support for Truschke and to host an event on March 27, 2021 for Truschke to further defend herself and discuss "reflections" on her teachings. (Ex. 83, 86).

5. Defendants Blame HAF for the Reports and Criticisms

At or around the time immediately leading up to the publication of the Al Jazeera stories at issue, HAF was being wrongly accused of an "attack against [Defendants]" and "entering into a joint effort with [MEF] to target [Defendants]" with respect to the SGL and *Newsweek* articles. (Ex. 13, 66). Defendants falsely accused HAF of being a "US-based Islamophobic organization" that is allegedly supportive of the "persecution of India's 280 million Muslims and Christians", and blamed HAF for the *Newsweek* article as well as HAF's supposed "participat[ion] in [a] coordinated effort attacking [Truschke]…involv[ing] targeted harassment of [her] and others and violent threats." (Complaint, ¶¶26(b), 33(c); Ex. 64, 68-70).

At or around this same time, Ahmed conspired with his co-defendants to cause non-party Naik to publish false, defamatory and highly damaging statements about HAF, as a means to retaliate against HAF, seek to deflect criticism of Defendants' own actions and those of their affiliated organizations, lend credibility to those organizations, and solicit further interest and donations on their own behalf. (Complaint, ¶¶2-5, 23, 52).

Defendants knowingly, willfully and intentionally conspired, agreed and coordinated amongst themselves and with non-party Naik to defame HAF in two articles on

www.aljazeera.com. (Complaint, ¶23). To retaliate against HAF and deflect criticism from Defendants and attention away from the SGL and *Newsweek* articles and student outcry against Truschke's teachings, Defendants decided to target HAF with a campaign of lies and false statements, attempting to discredit HAF's educational and advocacy efforts. (Complaint, ¶¶2-5, 23-24, 27, 52).

Defendants conspired to cause Naik to author a first story or "exposé" that would falsely report, among other things, that HAF has alleged "ties to supremacist and religious groups", had received $833,000 in COVID-19 relief funding, and used this money to fund hate campaigns against certain groups in India. (Complaint, ¶¶2-5, 23-24; Ex. 58). Defendants further conspired to use the first story as an alleged basis for the Coalition to file a complaint with the U.S. Small Business Administration ("SBA") to investigate the propriety of the disbursement of the funds to HAF and the others, and then cause publication of a second story to report the filing of the SBA complaint along with additional false and defamatory statements about HAF. (Complaint, ¶¶2-5, 23-24; Ex. 59). Defendants have previously used the Coalition to attack HAF. (Complaint, ¶33(b)).

To further their aim, and perpetuate the conspiracy, Defendants conspired, agreed, and used each other and the Coalition as corroborating sources to bolster the false and defamatory statements about HAF. (Complaint, ¶¶3, 4). Each of the Defendants was directly quoted in the articles, conspired to cause false and defamatory statements to be made therein, and/or republished those statements. (Complaint, ¶¶4, 25-26, 29; Ex. 20, 58-59, 64). Moreover, Defendants conspired, agreed, and engaged in strategic and coordinated efforts to amplify the false and defamatory statements about HAF in the stories, each disseminating and/or republishing the stories, along with additional false and defamatory statements about HAF, on

their own platforms and/or through the platforms of their network of D.C.-based organizations. (Complaint, ¶¶3, 23, 27, 30-31, 33-34).

6. The First Story, Republications and Related Defamatory Statements

On April 2, 2021, Defendants caused multiple false and defamatory statements to be reported "from Washington DC" in the first story, authored by Naik and entitled "*Hindu right-wing groups in US got $833,000 of federal COVID fund [:] Five groups linked to Hindu nationalist organisations [sic] in India received direct payments and loans in federal relief fund*" (the "First Story"). (Complaint, ¶24, Ex. 58).

The First Story, appearing on www.aljazeera.com, identifies HAF as a "Washington based advocacy group" and falsely refers to HAF as a "Hindu right-wing group in [the] US" that is "linked to Hindu nationalist organisations [*sic*] in India" and has "ties to Hindu supremacist and religious groups." (Complaint, ¶24, Ex. 58). The story contains additional false and defamatory statements of and concerning HAF by co-defendant and co-conspirator, Viswanath, as "[HfHR] CO-FOUNDER", including:

> (a) "[Ms.] Viswanath, co-founder of Hindus for Human Rights, expressed concern that the US pandemic relief funds might end up furthering hate campaign[*sic*] against Muslims and other minorities in India";
>
> (b) "'All these organisations [including HAF] are sympathetic to the Hindu supremacist ideology. Their parent organisations continue to spread hatred in Hindu communities towards Muslims and Christians,'…"; and
>
> (c) "'Any American non-profit that perpetuates Islamophobia and other forms of hate should not receive federal relief funds in any form'".

("First Story Defamatory Statements"). (Complaint, ¶24; Ex. 2, Chart, Ex. 58).

Immediately thereafter, Defendants engaged in a strategic and coordinated effort to amplify the First Story Defamatory Statements by disseminating and/or republishing the First Story on their respective platforms, including by and through their network of D.C.-based

organizations, along with additional false and defamatory statements about HAF. (Complaint, ¶¶26-27). Among other things, Defendants caused: (a) D.C.-based IAMC to republish and/or post the First Story on IAMC's website and Twitter account, and to publish additional false and defamatory statements about HAF; (b) D.C-based HfHR to republish and/or post the First Story on HfHR's website and HfHR's Twitter account, and to publish additional false and defamatory statements about HAF; and (c) Truschke to republish and/or post statements and quotes from the First Story on her Twitter account, along with additional false and defamatory statements about HAF. (Complaint, ¶¶26-27; Ex. 2, Chart, Ex. 10-11, 20, 31-33, 59, 63-64, 81, 87-95). On April 2, 2021, Truschke confirmed that she blamed HAF for the recent public criticisms and student denouncements of her teachings, falsely alleging:

> "Some of the groups mentioned [in this First Story], especially HAF, have participated in a recent coordinated effort attacking me. [¶] That effort has involved targeted harassment of me and others and violent threats. [¶] This is a huge red flag for a US-based organization."

(Complaint, ¶26; *see also* Complaint, ¶33(c)). All of Defendants' statements are unequivocally false, defamatory, and highly damaging to HAF.

7. The Coalition reports HAF to the SBA

On April 6, 2021, in furtherance of their conspiracy, Defendants caused the Coalition to "call on the [SBA] to probe how US-based Hindu supremacist organizations received hundreds of thousands of dollars in federal Covid-19 relief funding" and IAMC to issue an "immediate" press release regarding the same. (Ex. 91, 96-99). The press release links to the First Story and states: "The coalition was responding to an expose published in Al Jazeera that five US-based organizations with ties to Hindu supremacists and religious groups in India received pandemic aid to the tune of $833,000...The organizations called out in the exposé — [including] Hindu American Foundation — are US-based front organizations for Hindutva, the supremacist

ideology that is the driving force behind much of the persecution of Christians, Muslims, Dalits and other minorities in India." (Ex. 96-97).

8. The Second Story, Republications and Related Defamatory Statements

On or about April 8, 2021, Defendants caused additional false and defamatory statements to be published in the second story on www.aljazeera.com, entitled "*Call for US probe into Hindu right-wing groups getting COVID fund [:] Following an Al Jazeera report, US-based Coalition to Stop Genocide in India demands investigation into federal funds given to 'sponsor hate'*" (the "Second Story"). (Complaint, ¶28; Ex. 59). As a purported follow up piece to the First Story, which was reported from "Washington DC", the Second Story reports: "Following an Al Jazeera investigation [hyperlink to First Story], [the Coalition] has called on the US Small Business Administration (SBA) to probe how Hindu right-wing groups received hundreds of thousands of dollars in federal COVID-19 relief funds." (Ex. 59).

The Second Story contains additional false and defamatory statements of and concerning HAF ("Second Story Defamatory Statements") (collectively with the First Story Defamatory Statements, the "Defamatory Statements") by Ahmed, as "executive director of IAMC"; Rajagopal, as director and "member" of HfHR; Prabhudoss, as "chairman of [FIACONA]"; and the Coalition. (Complaint, ¶29; Ex. 59). Defendants caused the Second Story to attribute numerous statements to the Coalition. (Complaint, ¶28). Defendants' D.C.-based organizations are members of the Coalition, have a controlling interest in the Coalition and had pre-publication approval of Coalition's statements in the Second Story. (Complaint, ¶¶28, 20-21).

As with their combined efforts for the First Story and in furtherance of their conspiracy, Defendants engaged in agreed upon, strategic, and coordinated efforts to amplify the Second Story Defamatory Statements, including by and through their network of D.C.-based

organizations. (Complaint, ¶¶30-31, 33-34). Defendants caused: (a) HfHR to post on HfHR's website a link to the Second Story; (b) Truschke to post on Twitter a link to the Second Story, and, thereafter, a series of additional false and defamatory statements about HAF on April 13, 2021 (Comp. 33); (c) IAMC to republish the Second Story on IAMC's website, to make numerous posts on IAMC's Twitter about the Second Story with links to the same, and to "retweet" Truschke's Twitter posts about the First and Second Story (Complaint, 30, 31); and (d) Prabhudoss to tweet that HAF allegedly "confirmed and acknowledged… that they are a Hindu supremacist organization in the US operating as a charity. Wow!" (Comp1aint, ¶¶30-31, 33-34).

As further confirmation of Defendants' conspiracy, on or around April 11, 2021, Ahmed arranged for Naik to appear at IAMC's virtual strategic meeting of IAMC's Executive Team to "discuss [IAMC's] advocacy strategy for the next quarter." Naik was listed on the related agenda under the designation, "News & Media Outreach". (Complaint, ¶32; Ex. 54).

The Defamatory Statements falsely allege, among other things, that HAF is a "US-based front organization [*sic*]" for India-based Hindu nationalist organizations, which are allegedly supremacist and highly controversial; is a subsidiary of those organizations in India which Defendants have accused of egregious human rights abuses; that HAF has "misappropriat[ed]" and "funneled" U.S. Government COVID relief funds to those same organizations; and participated in a coordinated effort to attack Truschke and make violent threats against her. (Complaint, ¶35). The Defamatory Statements falsely portray HAF as contributing to and/or perpetrating heinous and despicable crimes against humanity—acts of massacre, ethnic cleansing, terrorism, forced-conversions, and other forms of violence against, and subjugation of, religious minorities in India (Id.). All of these statements are unequivocally false, defamatory, and highly damaging to HAF. (Complaint, ¶¶3, 35-36).

The conspiracy and coordinated attacks by Ahmed and his co-conspirators on HAF occurred in this District because these acts were intended to damage, and have in fact caused substantial damage, to HAF's reputation and its ability to raise funds. (Complaint, ¶¶17-18, 35).

Ahmed and his co-defendants caused the Defamatory Statements to be published and made, and/or republished, with actual malice, including because there are extensive publicly available and readily accessible financials and other documents that directly contradict the Defamatory Statements and establish that no funds were provided by HAF to any alleged Indian nationalist or supremacist organizations. (Complaint, ¶¶37-40). Because there were obvious reasons to doubt the accuracy of the Defamatory Statements, Ahmed and his co-defendants had an obligation to verify the truth, which they failed to do so, demonstrating that they published the statements with actual malice. (Complaint, ¶40).

For the reasons set forth below, this Court should deny Defendant's motion to dismiss. Defendant has engaged in deliberate, purposeful, and affirmative activity within this District for which Defendant could reasonably anticipate being haled into Court for HAF's claims, and HAF has sufficiently stated its claims against Defendant.

III. THIS COURT HAS PERSONAL JURISDICTION

A. Applicable Standards

At this juncture, HAF "need only establish a prima facie case that personal jurisdiction exists in order to survive [the] motion to dismiss." *Shapiro, Lifschitz & Schram, P.C. v. Hazard*, 24 F.Supp.2d 66, 70 (D.D.C. 1998). To make this showing, HAF "may rest [its] arguments on the pleadings, 'bolstered by such affidavits and other written materials as [it] can otherwise obtain'." *Urban Institute v. FINCON Servs.*, 681 F.Supp.2d 41, 44 (D.D.C. 2010) (quoting *Mwani v. bin Laden,* 417 F.3d 1, 7 (D.C.Cir.2005)). The Court may also consider matters of

which it may take judicial notice. *Abhe & Svoboda, Inc. v. Chao*, 508 F.3d 1052, 1059 (D.C. Cir. 2007); Fed. R. Evid. 201. While the Court "may receive and weigh affidavits and any other relevant matter to assist it in determining the jurisdictional facts", it "must resolve any factual discrepancies with regard to the existence of personal jurisdiction in favor of [HAF]." *Lewy v. S. Poverty L. Ctr., Inc.*, 723 F.Supp.2d 116, 118–19 (D.D.C. 2010).

Further, "for purposes of resolving a challenge to personal jurisdiction, the Court may assume that [HAF's] claims are meritorious." *Kopff v. Battaglia*, 425 F.Supp.2d 76, 80 (D.D.C. 2006). "To the extent that the merits of the complaint overlap with jurisdictional facts, such an assumption may be necessary—for example, where a determination of personal jurisdiction in a tort case requires a finding that defendant caused tortious injury." *Id.* at n. 3.

For the reasons stated below, HAF has established a prima facie case that this Court has specific personal jurisdiction under subsections (1), (3) and (4) of D.C. Code §13-423(a).

B. Section 13-423(a)(1)—Ahmed "transacts business" as "more than an employee" of D.C.-based IAMC and as a co-conspirator

Section 13-423(a)(1) provides: "A [District] court may exercise jurisdiction over a person, who acts directly or by an agent, as to a claim arising from the person's [] transacting any business in the [District]." The Court of Appeals in this District has interpreted 13-423(a)(1) as co-extensive with the "minimum contacts" due process analysis, such that they merge into a single inquiry. *Urquhart-Bradley v. Mobley*, 964 F.3d 36, 45, 47 (D.C. 2020); *GTE New Media Services Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1347 (D.C. Cir. 2000).

1. Jurisdiction exists over Ahmed as a founder and controlling officer of a D.C.-based entity that is organized under the laws of this District

Where a Court has personal jurisdiction over a corporation or entity that has availed itself of the privileges and responsibilities of doing business in the District, the Court may exert

jurisdiction under Section 13-423(a) over individual corporate officers or employees, based on the company's activities, who are more than mere "employees of the corporation." *See Montes v. Janitorial Partners, Inc.*, 128 F.Supp.3d 188, 191 (D.D.C. 2015), *rev'd and remanded on other grounds*, 859 F.3d 1079 (D.C. Cir. 2017); *Covington & Burling v. Int'l Mktg. & Rsch., Inc.*, No. CIV.A. 01-0004360, 2003 WL 21384825, at *6 (D.C. Super. Ct. Apr. 17, 2003); *Kopff*, 425 F.Supp.2d at 84 (relying on and explaining *Covington*, 2003 WL 21384825 at *6). This "more than an employee" rule is a well-recognized exception to the fiduciary shield doctrine, which provides that "personal jurisdiction over the employees or officers of a corporation in their individual capacities must be based on their personal contacts with the forum and not their acts and contacts carried out solely in a corporate capacity." *Nat'l Cmty. Reinvestment Coal. v. NovaStar Fin., Inc.*, 631 F.Supp.2d 1, 5 (D.D.C. 2009).

Whether an individual is more than a mere corporate employee is a case specific inquiry, but "[t]he weight of authority suggests…that an individual is likely to be more than a 'mere employee' when he is a senior corporate officer who sets corporate policy and oversees daily operations." *Montes*, 128 F.Supp.3d at 191-192 (held court properly exercised jurisdiction under Section 13-423(a)(1) over "President and Chief Operating Officer" who was owner of company and had authority to set company policies and practices where company "furnished janitorial services in the District" and "availed itself of the privileges and responsibilities of doing business in the District"); *see also*, *Covington*, 2003 WL 21384825 at *6 (D.C. Superior Court exerted jurisdiction over two individual corporate officers of company with supervisory authority, based on the company's activities, where company purposefully availed itself of the privilege of conducting activities in the District); *Nat'l Cmty. Reinvestment Coal.*, 631 F.Supp.2d at 1, 7-8 (held court could exert jurisdiction over a corporate officer who worked for defendant companies

out of Kansas City office and who was "not the sole officer of the defendant entities" "[a]s a result of the significant influence that he exerts over [the companies'] policies, procedures, and operations, and [officer's] involvement in the creation, implementation, and maintenance of the three policies at issue"); *Azamar v. Stern*, 662 F.Supp.2d 166, 175 (D.D.C. 2009) (held court could exercise personal jurisdiction over "president and principal owner" of company where court could reasonably infer that he, as the company's owner and officer, controlled the company's management and policies).

More recently, in *Urquhart-Bradley*, 964 F.3d at 45, the U.S. Court of Appeals for the District of Columbia held that the fiduciary shield doctrine does not apply at all to the transacting-business prong of the District of Columbia's long-arm statute, explaining Section 13-423(a)(1) of D.C.'s long arm statute is coextensive with the Due Process Clause and "reaches as far as the Constitution allows." "It has no room for the fiduciary shield doctrine, which would shorten the District of Columbia's jurisdictional hand". *Id.* at 47. A district court must consider an individual's suit-related contacts undertaken in his or her corporate role because "[t]hose contacts count." *Id.* "[T]he appropriate inquiry is whether [defendant has] the requisite 'minimum contacts' with the District so that the exercise of personal jurisdiction would not offend 'traditional notions of fair play and substantial justice.'" *Quality Air Servs., L.L.C. v. Milwaukee Valve Co.*, 567 F.Supp.2d 96, 100 (D.D.C. 2008) (quoting *Material Supply Int'l Inc. v. Sunmatch Industrial Co., Ltd.,* 62 F.Supp.2d 13, 19 (D.D.C.1999)). Even "'a single act may be sufficient to constitute transacting business,' so long as that contact is 'voluntary and deliberate, rather than fortuitous.'" *Jackson v. Loews Washington Cinemas, Inc.*, 944 A. 2d 1088, 1093 (D.C. 2008) (citing *Mouzavires v. Baxter*, 434 A. 2d 988, 992, 995 (D.C.1981)). "When such a connection to the forum state is established, due process is satisfied because the defendant should

'reasonably anticipate being haled into court there.'" *Id.* at 1093–94 (quoting *World–Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 297 (1980)).

Applying these authorities to the facts of this case, HAF has made a prima facie showing that personal jurisdiction exists over Ahmed because, among other things, he is "more than an employee" of a D.C. based corporation. He is a founder and controlling officer of IAMC, which holds itself out as the "largest Washington, DC based advocacy organization of" its kind. (Complaint, ¶10; Ex. 11). IAMC is organized under the laws of this District and has thus necessarily availed itself of the privileges and responsibilities of doing business here. (Ex. 10); D.C. Code § 13-422 ("court may exercise personal jurisdiction over a person… organized under the laws of… the [District] as to any claim for relief."); *Bible Way Church of Our Lord Jesus Christ World Wide, Inc. v. Showell*, 578 F.Supp.2d 164, 169 (D.D.C. 2008). In addition, IAMC regularly hosts (often with HfHR) events and briefings from, within, and/or tied to this District, and also regularly issues and/or disseminates reports, publications, and/or press releases from and/or connected to this District, including but not limited, on its website and Twitter account. (Ex. 18, 14-23). IAMC also has an interactive website, which is available 24 hours a day to the public, including D.C. residents, and which solicits and accepts donations, newsletter subscriptions, volunteers and visitors to join IAMC in its mission and activities, including in D.C. (Ex. 11, 24-28); s*ee Heroes, Inc. v. Heroes Foundation*, 958 F. Supp. 1, 5 (D.D.C. 1996) (defendant who solicits donations on website is purposefully availing itself of the privilege of doing business in the District).

As a founder and the acting Executive Director of IAMC who controls and operates IAMC, it can be reasonably inferred that Ahmed is responsible for managing IAMC and overseeing its daily functions, and that he has authority to set company policies and practices or

has significant influence over them. (Complaint, ¶¶2, 10, 20). The Court can attribute IAMC's connections with the District to Ahmed. *Nat'l Cmty. Reinvestment Coal.*, 631 F.Supp.2d at 6.

Further, Ahmed has publicly confirmed that he represents IAMC, and it is apparent that he has the authority to speak on behalf of IAMC and to publish and/or issue statements, letters and/or reports on IAMC's behalf, as well as the authority to cause IAMC to publish statements and/or content on its website and Twitter account and elsewhere, in furtherance of IAMC's, business, mission, and activities as an advocacy organization—because Ahmed regularly does so. (Complaint, ¶¶2, 10, 20; Ex. 8-9, 12, 67-69).

Moreover, exercising personal jurisdiction over Ahmed comports with due process. Conduct and statements by IAMC and by Ahmed, as IAMC's Executive Director and/or on IAMC's behalf, originate and occur in D.C., IAMC's self-proclaimed base. (Ex. 1, 3-4); *see also* Section III.C.1 and 3 (discussing location of injury and Ahmed's tortious acts). Ahmed, individually and as a controlling officer of D.C.-based IAMC, voluntarily and deliberately committed the acts alleged and/or caused IAMC to commit the acts alleged in this case within this District, including conspiring and agreeing with Ahmed's and IAMC's closest D.C.-based allies and partners in a D.C.-based Coalition and non-party Naik, to publish statements and cause reports from Washington, D.C. of false, defamatory and highly damaging statements targeting D.C.-based HAF, and causing dissemination and amplification of such statements and additional falsities about HAF by and through Defendants and Defendants' network of D.C.-based entities, to further their conspiracy and cause injury to HAF within this District.

Based on these voluntary and deliberate contacts with D.C., Ahmed could reasonably anticipate being haled into this Court by HAF even if he was allegedly not physically present within the District when he committed and/or caused these acts to be committed. *Jackson*, 944

A.2d at 1093 (even a single act may constitute transacting business so long as that contact is voluntary and deliberate); *Quality Air Servs.*, 567 F.Supp.2d at 100 (company with no physical presence that targeted contractors like plaintiff who served D.C. area should reasonably have been on notice that it could be "haled into court" here); *Nat'l Cmty. Reinvestment Coal.*, *supra*, 631 F.Supp.2d at 1, 7-8 (held personal jurisdiction existed over corporate officer who worked out of defendants' Kansas City offices but was more than an employee). Moreover, Ahmed claims that he did not physically travel to D.C. from February 2020 to June 2021, but this is not unusual or unexpected during this heightened period of the Covid-19 pandemic when travel was significantly limited and replaced with remote attendance. Remote attendance at events, meetings or functions for or in connection with D.C.-based IAMC's business and/or activities during this period does not make Ahmed's contacts with D.C. any less significant.

2. Personal jurisdiction exists based on Defendants' conspiracy

For the reasons stated in Section IV.A., *infra*, HAF has sufficiently alleged a civil conspiracy and thus has made a prima facie showing of this separate theory of personal jurisdiction under Section 13-423(a)(1). "Persons who enter the forum and engage in conspiratorial acts are deemed to 'transact business' there 'directly'; coconspirators who never enter the forum are deemed to 'transact business' there 'by an agent.'" *Second Amend. Found. v. U.S. Conf. of Mayors*, 274 F.3d 521, 523–24 (D.C. Cir. 2001); D.C. Code § 13–423(a)(1). "So long as any one co-conspirator commits at least one overt act in the forum jurisdiction sufficient to establish long-arm jurisdiction over that person and the act committed is in furtherance of the conspiracy, there is personal jurisdiction over all members of the conspiracy." *Jung v. Assoc. Amer. Med. Coll.,* 300 F.Supp.2d 119, 141 (D.D.C. 2004).

For jurisdictional purposes, HAF has alleged and/or shown overt acts within the forum

that were taken in furtherance of the conspiracy, as well as each defendant's knowledge that their co-conspirators were carrying out acts in furtherance of the conspiracy in the forum. *EIG Energy Fund XIV, L.P. v. Petroleo Brasileiro S.A.*, 246 F.Supp.3d 52, 90, 91 (D.D.C. 2017). Ahmed and his co-defendants are allies and partners with a controlling interest in a D.C.-based Coalition and/or controlling officers of D.C.-based organizations. They have close ties to non-party Naik, who is a regular contributor to Al Jazeera, which is registered to do business in this District and has a D.C. bureau with the most correspondents of all of its U.S. bureaus. (Ex. 52-53, 55-57). Ahmed and his co-defendants have a history of attacking and disparaging HAF as a shared adversary. Based on these inter-connected relationships and this common history, and their conspiracy to deflect severe criticism from themselves and onto HAF, Ahmed and his co-conspirators conspired to use each other as corroborating sources for stories that they knew would be reported from D.C. by a regular contributor to the D.C. branch of Al Jazeera about a D.C. entity (HAF) and about events and subject matter in D.C. (disbursement of Covid-19 relief funds to a D.C. entity that is involved in public affairs and public policy advocacy in D.C. and an SBA investigation of that D.C. entity). Ahmed and his co-conspirators also knew that all of their respective organizations and the Coalition are located and based in D.C., and that the conspiratorial acts and statements by these various D.C. entities—and by Defendants as controlling officers and/or members of these D.C. entities—would originate from and/or in connection with these D.C. entities, and would occur in and affect and harm HAF within this District. (Complaint, ¶¶17, 18, 35).

C. <u>Section 13-423(a)(3) and (4) – Act causing tortious injury in D.C.</u>

Section 13-423(a)(3) and (4) provide: "A [District] court may exercise jurisdiction over a person, who acts directly or by an agent, as to a claim arising from the person's--

(3) causing tortious injury in the [District] by an act or omission in the District…; [or]

(4) causing tortious injury in the [District] by an act or omission outside the [District] if he regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed, or services rendered, in the [District.]

See D.C. Code §13-423(a).

1. Injury within this District – Subsection (a)(3) and (4)

HAF has made a prima facie showing of injury within this District because it is undisputed that HAF is domiciled and headquartered in this District, and HAF has alleged that its reputation and ability to fundraise have been injured by Ahmed's tortious conduct. (Complaint, ¶¶6, 17, 18, 35); *see Kopff*, *supra*, 425 F.Supp.2d at 80, n. 3 (for jurisdictional purposes, this Court may assume Ahmed caused HAF tortious injury); *see also Blumenthal v. Drudge*, 992 F. Supp. 44, 54 (D.D.C. 1998) ("[I]t is…undisputed that the tortious injury caused by defendant['s] act of transmitting [the defamatory article online] was suffered by [the resident plaintiffs] in the District of Columbia.").

Notably, defamation is a claim "in which the injury, foreseeably, is felt with greatest force in the place where the plaintiff lives." *Crane v. Carr*, 814 F.2d 758, 760 (D.C. Cir. 1987); *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 780–81 (1984) ("bulk of the harm" in libel case occurs in plaintiff's domicile). "Quite clearly, economic loss resulting from defamation is most likely to be felt in one's place of business whatever the locus of its publication…" *Crane v. New York Zoological Soc.*, 894 F.2d 454, 457 (D.C. Cir. 1990). Thus, a libel plaintiff has made the requisite prima facie showing of injury within the District under the long-arm statute where the plaintiff asserts that it conducts business in the District and that its business has suffered harm as a result of the libelous publication. *Id.* at 457, 458; *see also Akbar v. New York Magazine*, 490

F.Supp. 60, 64 (D.D.C. 1980) (held that injury to plaintiffs' professional standing caused by libelous article constituted an injury "in the District" for purposes of long-arm statute where plaintiffs were former foreign diplomats who temporarily resided in the Washington metropolitan area and had their place of business in the District).

2. Persistent conduct and doing business – Subsection (a)(4)

A defendant's contacts under Subsection (a)(4) "need not be great to satisfy subsection (a)(4)" and "need not be [even] related to the claim". *Lewy v. Southern Poverty Law Center, Inc.*, 723 F.Supp.2d 116, 126 (2010); *Crane*, 814 F.2d at 763; *see Aiken v. Lustine Chevrolet, Inc.*, 392 F.Supp. 883, 885 (D.D.C. 1975) (contacts under subsection (a)(4) "need have no relationship to the act or failure to act which caused the injury"); *Etchebarne-Bourdin v. Radice*, 982 A.2d 752, 763 (D.C. 2009) ("where the tortious act is alleged to have caused injury in the [District], and the claim arises from such act and injury, no additional nexus need be shown between the claim and the persistent course of conduct."); *Steinberg v. Int'l Crim. Police Org.*, 672 F.2d 927, 930–32 (D.C. Cir. 1981) (defendant's "longstanding ties to this forum, while they do not add up to 'doing business' here, suffice to supply the 'something more' subsection (a)(4) requires).

For the same reasons and based upon the same voluntary, deliberate, and regular contacts with this District specified under the Subsection (a)(1) "transacting business" prong, Ahmed—as a controlling officer of D.C.-based IAMC—"regularly does…business" and/or engages in a "persistent course of conduct" in this District under subsection (a)(4) as well. Ahmed and IAMC have longstanding ties with this District, since Ahmed first co-founded IAMC in 2002 and it was organized under the laws of D.C. at that time. (Ex. 9-10); *Steinberg*, 672 F.2d at 931 (held that Interpol's longstanding ties to this forum, while they do not add up to "doing business" here, sufficed to supply the "something more" subsection (a)(4) requires); *Covington*, 2003 WL

21384825, at *6 (applying more than "mere employee" exception to Subsection (a)(4), extending jurisdiction over company two officers who were involved in all company functions).

3. Locus of act causing injury – Subsection (a)(3) and (4)

For purposes of the long-arm statute, HAF's injury was caused "by an act or omission in the District." D.C. Code §13-423(a)(3). Ahmed and his co-conspirators—as representatives and controlling officers of their respective D.C.-based entities and/or controlling members of the D.C.-based Coalition—committed overt acts of making defamatory statements of and concerning HAF (a D.C. entity) to the D.C. branch of a publisher (Al Jazeera) for publication in reports/stories from and in D.C. about events and subject matter in D.C. Ahmed and his co-conspirators committed additional overt acts, in furtherance of their conspiracy, to ensure the greatest impact, effect, and harm to D.C.-based HAF in D.C., including but not limited to: (a) using their titles and positions as controlling officers of their respective D.C.-based entities to act and purport to validate themselves and each other as purported sources and/or corroborating sources for the stories; (b) causing the D.C-based Coalition to report HAF to the SBA in D.C., based upon the First Story, which was reported from D.C.; (c) causing the publication of the Second Story about the Coalition's report of HAF to the SBA; (d) publishing, republishing and/or further disseminating the Defamatory Statements on and through the platforms of their D.C.-based organizations; and (e) causing the D.C.-based Coalition to publish defamatory statements about D.C.-based HAF in the Second Story. (Complaint, ¶¶3, 23, 27, 30-31, 33-34).

Moreover, even if Ahmed's and his co-conspirators' acts, for purposes of the long-arm statute, were presumed to have occurred outside the District (which they did not), jurisdiction would still exist under subsection (a)(4). For the reasons previously stated, the other two elements necessary for jurisdiction under subsection (a)(4) exist—injury and regular conduct of

business/persistent course of conduct in this District—and thus, this Court would have personal jurisdiction over Ahmed under subsection (a)(4) as well. *See Akbar*, 490 F.Supp. at 65-66.

D. HAF is entitled to jurisdictional discovery

For the reasons stated, HAF has made a prima facie showing of personal jurisdiction, but to the extent that the Court is inclined to find otherwise, HAF is entitled to jurisdictional discovery. *See Second Amend. Found.*, 274 F3d at 525 (plaintiff can defend against motion to dismiss on the basis of lack of jurisdictional discovery).

"A plaintiff faced with a motion to dismiss for lack of personal jurisdiction is entitled to reasonable discovery, lest the defendant defeat the jurisdiction of a federal court by withholding information on its contacts with the forum." *El-Fadl v. Central Bank of Jordan*, 75 F.3d 668, 676 (D.C.Cir.1996), *abrogated on other grounds by Samantar v. Yousuf*, 560 U.S. 305, (2010). Thus, it is well settled in this Circuit that when a defendant moves to dismiss a complaint based on lack of personal jurisdiction, plaintiff is entitled to discovery on jurisdictional issues if plaintiff can "demonstrate[] that it can supplement its jurisdictional allegations through discovery." *GTE New Media Services Inc.* 199 F.3d at 1351-1352 (citing *Crane*, 814 F.2d at 760 (vacating, in part, the District Court's judgment, because "Crane's case was dismissed with no opportunity for discovery on the issue of personal jurisdiction")). "As a general matter, discovery under the Federal Rules of Civil Procedure should be freely permitted, and this is no less true when discovery is directed to personal jurisdiction…." *Edmond v. U.S. Postal Service General Counsel*, 949 F.2d 415, 425 (D.C. Cir. 1991). It is an abuse 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—all of which HAF has alleged here. *Id.*

HAF therefore requests that the Court permit it to conduct jurisdictional discovery, including but not limited to, propounding the written discovery requests for, among other things, information and documents regarding: (a) Ahmed's role, duties, activities, authorities, and responsibilities with respect to IAMC at all relevant times, including but not limited to, the supervision and oversight of IAMC's daily operations and public outreach/communications, development and implementation of it policies and procedures, and involvement and participation in creation and dissemination of content on IAMC's website, Twitter and other platforms (including but not limited to the statements at issue in this case); (b) IAMC's conduct of business and other activities within this District, including but not limited to, transactions and donations with D.C. residents, newsletters subscribers/employees/volunteers located in D.C., content targeting D.C. residents—on its website, Twitter account and elsewhere; (c) Ahmed's contacts with D.C. in his role and capacity as a founder and officer of IAMC, including but not limited to, his participation in day-to-day internal and external communications and meetings, and participation and involvement with conferences, briefings, events, and/or other functions; (d) Ahmed's and IAMC's relationship, role, involvement, duties and responsibilities with respect to the Coalition and D.C. contacts related to such; (e) IAMC's and Ahmed' relationships with co-defendants, co-defendants' respective entities and organizations, non-parties Naik and Al Jazeera; (f) Ahmed's and IAMC's non-privileged communications with co-defendants, co-defendants' respective entities and organizations, non-parties Naik and Al Jazeera, including but not limited to, the period from December 1, 2020 to April 30, 2021; and (g) the issues and purported claims in Ahmed's declaration in support of his motion to dismiss.

IV. THIS COURT HAS SUBJECT MATTER JURISDICTION

"The general rule to assess whether the amount in controversy exceeds the threshold for

federal diversity jurisdiction is that 'the sum claimed by the plaintiff controls if the claim is apparently made in good faith.'" *Bronner ex rel. American Studies Ass'n v. Duggan*, 962 F.3d 596, 602 (D.C. Cir. 2020) (quoting *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 288 (1938)). HAF clearly meets this standard. HAF has alleged that the defamatory statements at issue have caused or will cause it to lose donations in the amount of at least $75,000. (Complaint, ¶36). HAF has also prayed for punitive damages on top of its claim for compensatory damages. (Complaint, Prayer for Relief ¶i); *see Hartigh v. Latin*, 485 F.2d 1068, 1071-72 (D.C. Cir. 1973) ("It is clear that punitive damages should be considered in determining the jurisdictional amount in controversy.").

Bronner states the standard for a dismissal on amount in controversy grounds: "if, from the face of the pleadings, it is apparent, to a legal certainty, that the plaintiff cannot recover the amount claimed or if, from the proofs, the court is satisfied to a like certainty that the plaintiff never was entitled to recover that amount, ... the suit will be dismissed". *Bronner*, 962 F.3d at 605 (quoting *St. Paul Mercury Indemnity*, 303 U.S. at 289). "[T]he Supreme Court's yardstick demands that courts be very confident that a party cannot recover the jurisdictional amount before dismissing the case for want of jurisdiction." *Rosenboro v. Kim*, 994 F.2d 13, 17 (D.C. Cir. 1993). "Even a 'cursory' allegation of the amount in controversy, if it exceeds the jurisdictional requirement, is sufficient to evade dismissal." *Information Strategies, Inc. v. Dumosch*, 13 F.Supp.3d 135, 140 (D.D.C. 2014). If a claim for $75,000 or more in damages "cannot be foreclosed on the bare face of the pleadings and the limited record", the motion to dismiss must be denied. *Martin v. Gibson*, 723 F.2d 989, 993 (D.C. Cir. 1983).

The face of HAF's pleadings does not make apparent, to a legal certainty, that HAF cannot recover $75,000; indeed, it pleads that HAF has lost or will lose donations in excess of

that amount, and should recover punitive damages as well.

Ahmed's contentions regarding subject matter jurisdiction are without merit. Ahmed argues that the Complaint fails because it alleges that HAF has lost or will lose more than $75,000, but cites no case that holds that such a pleading does not satisfy the amount in controversy requirement. In fact, Ahmed's position is illogical and contrary to congressional intent: it would mean that, even if HAF can prove an eventual loss of more than $75,000, the Court would not have subject matter jurisdiction. Ahmed also fails to take into account HAF's punitive damages claim, which puts an even higher amount in controversy. Ahmed also demands that HAF identify, in its Complaint, the specific donors whose donations were lost, but again cites no case that requires this sort of specificity of fact pleading at the motion to dismiss stage. Indeed, Fed. R. Civ. Proc. 9 specifies those matters that must be specifically pleaded in a federal action, and this issue is not enumerated; the Rules Committee did not include any requirement that a plaintiff set out all the evidentiary facts supporting its damages to satisfy the amount in controversy requirement as Ahmed demands.

Finally, Ahmed argues that HAF received donations after the Defamatory Statements were made. However, the fact that this may have happened does not prove to a legal certainty that HAF will not recover damages of at least $75,000; it is obviously possible to receive a donation from one donor and to lose a donation from another donor or donors. Under the applicable standard, this Court cannot dismiss this case on amount in controversy grounds unless it is shown to a legal certainty that HAF could never recover $75,000. That has not been done.

V. VENUE IS PROPER IN THIS DISTRICT

A. Venue Is Proper Under the Statutory Standard

HAF has alleged a conspiracy among the defendants to publish defamatory statements in

the District of Columbia that will cause harm to a District resident (HAF), which is involved in public affairs and public policy advocacy in Washington, D.C. Thus, venue is proper, as the action was brought in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred". 28 U.S.C. § 1391(b)(2).

B. Venue Is Proper Under the Pendent Venue Doctrine

Additionally, venue is proper for the claims against Ahmed under the doctrine of pendent venue. "The pendent venue doctrine is an exception to the general rule that a plaintiff must demonstrate proper venue with respect to each cause of action and each defendant." *Martin v. E.E.O.C.*, 19 F.Supp.3d 291, 309 (D.D.C. 2014) (cleaned up). "Pursuant to pendent venue, federal courts may exercise their discretion to hear claims as to which venue is lacking if those claims arise out of a common nucleus of operative facts as the claims that are appropriately venued and the interests of judicial economy are furthered by hearing the claims together." *Id.* (cleaned up). Thus, so long as the Court determines that some of the claims brought by HAF are properly venued, venue should lie for the entire action, as the action involves a common nucleus of operative facts: the conspiracy of the Defendants to defame HAF.

These principles together give rise to the rule for venue in conspiracy cases: so long as "a substantial part of the events giving rise to" the conspiracy claim arise within the district, venue is proper. *United Tactical Systems LLC v. Real Action Paintball, Inc.*, 108 F.Supp.3d 733, 754 (N.D. Cal. 2015). This can occur when the injury caused by the civil conspiracy occurs in the district as well. *E.g., Sadighi v. Daghighfekr*, 36 F.Supp.2d 267, 275-76 (D.S.C. 1999) (civil conspiracy action properly venued in South Carolina where Florida conspirators agreed to cause the transfer of an employee from Florida to South Carolina and the termination of someone's employment in South Carolina as part of the scheme).

C. The Cases Cited By Ahmed Are Distinguishable

Ahmed analogizes this case to *Corsi v. Stone*, 2020 WL 999053 (D.D.C. Mar. 1, 2020), but that case was completely different. In *Corsi v. Stone*, the Florida defendant allegedly defamed the New Jersey plaintiff by making statements to a Texas publication. The **only** connections the litigation had to the District were that the statements were disseminated everywhere (which would include D.C.) and the defendant was being prosecuted in the District for federal crimes. This case has far more connections to the District, including a D.C. plaintiff, D.C. injuries, D.C. entities controlled by Defendants, a D.C. conspiracy, stories reported from D.C., and subject matter that relates to the District.

Corsi v. Infowars, LLC, 2020 WL 1156864 (W.D. Tex. Mar. 10, 2020), is inapplicable for the same reasons. Arising out of the same facts as *Corsi v. Stone*, *Corsi v. Infowars* involved a New Jersey defendant's statements of and concerning a Florida resident made in a Texas publication. None of the connections present here were present there.

Nigerians in Diaspora Organization Americas v. Ogbonnia, 203 F.Supp.3d 45, 47 (D.D.C. 2016), involved a lawsuit against workers in Houston who continued to represent themselves as affiliated with their former employer. There was no connection to D.C. other than that the plaintiff (the parent of the organization in Houston that terminated the employees) was there. There were no allegations of a conspiracy within the district; rather, the matter was a local employment dispute in Houston. *Ogbonnia* is completely distinguishable.[2]

VI. HAF STATES VALID CLAIMS FOR CONSPIRACY AND DEFAMATION

A. HAF Has Stated a Claim for Conspiracy

"The elements of civil conspiracy are: '(1) an agreement between two or more persons;

[2] To the extent that the Court has any doubts about venue, the Court should order discovery on the issue for the same reasons that jurisdictional discovery would be proper.

(2) to participate in an unlawful act, or in a lawful act in an unlawful manner; and (3) an injury caused by an unlawful overt act performed by one of the parties to the agreement (4) pursuant to, and in furtherance of, the common scheme.'" *Executive Sandwich Shoppe, Inc. v. Carr Realty Corp.*, 749 A.2d 724, 738 (D.C. 2000). A conspiracy complaint should be construed liberally. *Id.* "Courts in this circuit have recognized that a plaintiff need not allege that an express or formal agreement was entered into. In fact, in most civil conspiracy cases, courts are required to infer an agreement from indirect evidence." *Lagayan v. Odeh*, 199 F.Supp.3d 21, 30 (D.D.C. 2016).

Lack of direct evidence of such an agreement is "neither rare nor fatal" in civil conspiracy cases. *Rawlings v. District of Columbia*, 820 F.Supp.2d 92, 106 (D.D.C. 2011). To state a conspiracy claim, the complaint needs to contain "enough factual matter (taken as true) to ***suggest*** that an agreement was made." *Lagayan*, 199 F.Supp.3d at 30 (emphasis added) (held that the requisite agreement could be inferred because the defendants—all of whom were related to each other—together coordinated the plaintiff's international travel to the defendants' home in the United States); *see also e.g., United States v. Scott*, 979 F.3d 986, 988–91 (2d Cir. 2020) (Second Circuit considered a conspiracy claim arising from prison officers' group beating of an inmate and held that the evidence supported a finding of agreement despite the lack of "an extended period of premeditation or a distinct verbal agreement" where officers worked together to keep the inmate restrained, restrict his ability to protect himself, and remove potential witnesses); *Broidy Cap. Mgmt. LLC v. Muzin*, No. 19-CV-0150 (DLF), 2020 WL 1536350, at *20–21 (D.D.C. Mar. 31, 2020) ("The totality of the circumstantial evidence alleged plausibly supports a conspiracy claim.").

Under these standards, HAF has stated a claim for conspiracy. HAF has alleged and/or shown that Defendants closely and routinely work together as allies and coalition partners

against HAF as a shared adversary, that they control affiliated organizations such as the Coalition, HfHR, IAMC and FIACONA, that they work in concert with and/or through the Coalition, that they (wrongly) blamed HAF for the *Newsweek* and SGL articles and alleged attacks on Truschke immediately leading up the Al Jazeera stories at issue, which provided reason and motive to deflect criticism from their owns acts and onto HAF as a common foe, they have close ties to the journalist (Naik) who shares their common goals and beliefs and is thus biased against HAF, and that they caused the Coalition to publish the false and defamatory statements that were attributed to the Coalition in the stories. (Complaint, ¶¶20, 28). In addition, HAF has alleged that the co-conspirators agreed to make and/or cause the Defamatory Statements, including but not limited to, the statements that appeared in the two stories at issue, and to disseminate, republish and/or amplify those statements on their own platforms and/or through the platforms of their network of D.C.-based organizations. (Complaint, ¶¶2-5, 23, 27, 30-31, 33-34); *Lagayan*, 199 F.Supp.3d at 30-32, *supra*; *Scott*, *supra*, 979 F.3d at 988–81; *see also*, *Rawlings*, 820 F.Supp.2d at 106-107 (held, though "facts may not overwhelmingly imply the existence of a conspiracy to commit assault and battery", it was a jury question "whether an unlawful agreement could be inferred from two police officers' behavior").

These allegations, construed liberally, allege or at the very least are sufficient to infer an agreement amongst Defendants to make the defamatory statements. *Mattiaccio v. DHA Group*, 20 F.Supp.3d 220, 230-31 (D.D.C. 2014), is distinguishable because, in that case, the plaintiff alleged generically that the defendants entered into a conspiracy to defame the plaintiff but offered no factual background at all as to the alleged conspiracy. In contrast, the case at bar alleges in detail how the conspiracy worked, who was involved, and what its purposes were. Similarly, in *Acosta Orellana v. CropLife Int'l*, 711 F.Supp.2d 81, 113-14 (D.D.C. 2010), there

were no allegations that the defendants were actually working together. In the case at bar, there are such allegations.

B. Ahmed Is Liable for His Own Statements and Those of His Co-Conspirators

Ahmed focuses narrowly on the statements he was quoted as saying, but this Court must consider not only the statements that he made, but also the statements made by his co-conspirators. A bedrock of conspiracy law is the principle that the acts of the conspiracy are attributable to the co-conspirators. *Riddell v. Riddell Washington Corp.*, 866 F.2d 1480, 1493 (D.C. Cir. 1989). (Ahmed argues in his brief that he should not be held responsible for his co-conspirators' actions, but cites no law in support of his claim.) Discovery will show Ahmed's precise involvement in the publication of the statements, but HAF has adequately alleged that he did, indeed, cause their publication. Thus, if HAF has pleaded a plausible claim for defamation with respect to any statement by Ahmed or a co-conspirator, the motion must be denied.

C. The First Story Is Actionable

Ahmed claims the First Story is non-actionable because HAF is a Hindu group and the label "right wing" is a matter of opinion. However, this argument ignores other statements in the story that are defamatory, accusing HAF of connections with anti-Muslim, Islamophobic hate groups (and anti-Christian groups) in India, and of misusing federal funds. These include: (1) "'All these organisations [including HAF] are sympathetic to the Hindu supremacist ideology. Their parent organisations continue to spread hatred in Hindu communities towards Muslims and Christians,'…"; and (2) "'Any American non-profit that perpetuates Islamophobia and other forms of hate should not receive federal relief funds in any form.'". (Ex., 58).

"When confronted with a motion to dismiss a defamation claim, a court must evaluate whether a statement is capable of defamatory meaning." *Zimmerman v. Al Jazeera America*, 246

F.Supp.3d 257, 273 (D.D.C. 2017) (cleaned up). "To evaluate whether a statement is capable of defamatory meaning, courts employ a two-part framework that asks: (a) whether a communication is capable of bearing a particular meaning, and (b) whether that meaning is defamatory. The jury then determines whether the communication was in fact so understood by its recipient." *Id.* (cleaned up). "It is only when the court can say that the publication is not reasonably capable of any defamatory meaning and cannot be reasonably understood in any defamatory sense that it can rule as a matter of law, that it was not libelous." *Id.* (cleaned up). Under the *Zimmerman* defamatory meaning test, these statements are susceptible of defamatory meaning. They portray HAF as an extremist, racist, ethnocentric organization with ties to bad actors in India and which misuses American taxpayer dollars. Such claims, if shown to be false at trial, will constitute defamation. Ahmed himself called the *Newsweek* article "defamatory and libelous" for describing IAMC as an Islamist anti-Hindu hate group. (Ex. 66-67).

Ahmed also argues that the statements in the First Story are not "of and concerning" HAF, but cites to no law to support this argument. The "of and concerning" requirement does not require that a defamatory statement mention the plaintiff, but merely needs to be discussing the plaintiff. "To satisfy the 'of and concerning' element, it suffices that the statements at issue lead the listener to conclude that the speaker is referring to the plaintiff by description, even if the plaintiff is never named or is misnamed." *Croixland Properties Limited Partnership v. Corcoran*, 174 F.3d 213, 216 (D.C. Cir. 1999); *see, e.g., Bindrim v. Mitchell*, 155 Cal. Rptr. 29 (Cal. App. 1979) (affirming defamation judgment based on novel that never named plaintiff but was clearly about him). The First Story is clearly discussing HAF.

D. <u>The "First Tweet" Is Actionable</u>

Ahmed first argues that the "First Tweet" - "Experts have raised concerns that the US

pandemic relief funds received by Hindu rightwing groups might end up furthering hate campaign against Muslims and other minorities in India, @raqib_naik reports in @AlJazeera_World" - is not defamatory as a matter of law.

Under the *Zimmerman* standard for defamatory meaning, the First Tweet is capable of bearing a defamatory meaning. It claims that HAF is a Hindu right wing group that will misuse U.S. taxpayer money to foment anti-Muslim hatred. Those are statements that are likely to injure HAF's reputation. As previously noted, Ahmed himself called the *Newsweek* article "defamatory and libelous" for describing IAMC as an Islamist anti-Hindu hate group. (Ex. 66-67).

Ahmed argues that the tweet is true, but the truth of the tweet cannot be litigated on a motion to dismiss, as long as HAF's allegation that the First Tweet is false is plausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Considering all the allegations in the Complaint, there is nothing implausible, about the allegation that HAF is not, in fact, a Hindu right wing group that is using pandemic relief funds to foment anti-Muslim hate. The Court cannot litigate the truth of that claim on a motion to dismiss, and Ahmed cites no cases that hold otherwise.

Next, Ahmed argues that the statement is not "of and concerning" HAF because it does not mention HAF. As noted above, this is not the standard for "of and concerning". Whether readers perceived the First Tweet as referring to HAF is a factual issue that cannot be reached on a motion to dismiss. Certainly, HAF is one of the alleged Hindu right wing groups specifically named in the article cited in the First Tweet.

Luhn v. Scott, 843 Fed.Appx. 326 (D.C. Cir. 2021), cited by Ahmed, is not to the contrary. *Luhn* involved a story about a female Fox News staffer in which she said that she had no knowledge of sexual misconduct by her boss, the late Roger Ailes. One of Ailes' victims sued, claiming that the statements defamed her. However, the court held that the statements

could not reasonably be construed to be a denial of the plaintiff's allegations, but rather were simply a statement that the defendant had not witnessed whatever Ailes may have been doing. Here, the First Tweet contains very specific allegations (not merely a denial of knowledge of misconduct as in *Luhn*) that, in context, refer to HAF.

Ahmed next argues that HAF does not allege that he published the statement. However, this ignores HAF's allegations that Ahmed caused IAMC to publish the statement and HAF's allegations of a conspiracy. Indeed, the case cited by Ahmed—*Zimmerman*, 246 F.Supp.3d at 273—merely requires a pleading that the defendant "knowingly participated in publishing the defamation". HAF has alleged this. Moreover, as noted above, Ahmed is responsible for all of his co-conspirators' statements.

Next, Ahmed argues that his linking to and quoting the First Tweet cannot be actionable. However, this argument relies on cases involving third parties linking to previously published material. This law has no application here, where Ahmed is alleged to have caused the publication of the First Tweet and to have participated in the dissemination of the First Tweet as part of the conspiracy. Thus, HAF is alleging he engaged in additional dissemination of his own defamatory material, not dissemination of someone else's.

Ahmed's cases are distinguishable. For instance, in *Lokhova v. Halper*, 995 F.3d 134, 142-43 (4th Cir. 2021), the plaintiff was trying to avoid a statute of limitation bar by relying on links to previously published material. HAF here is not making any similar attempt—its claims are timely based on the original publication date. *Biro v. Condé Nast*, 963 F.Supp.2d 255, 268 (S.D.N.Y. 2013), which holds the statute of limitations does not get reset when third parties comment on a defamatory story, is similarly inapplicable here. *In re Philadelphia Newspapers, LLC*, 690 F.3d 161 (3d Cir. 2012), was a bankruptcy case that turned on whether certain

defamation claims arose pre-petition or post-petition; because they were based on republications, they were held to arise pre-petition. Again, that is a completely different issue than the case at bar. *Jankovic v. International Crisis Group*, 494 F.3d 1080, 1087 (D.C. Cir. 2007), holds that the copying of an article **by a reader** is not a new publication; *Jankovic* says nothing about a co-conspirator republishing an article that he had a hand in originally disseminating.

E. Ahmed's Quote in the Second Story is Actionable

In the Second Story, Ahmed is quoted on the record as saying "US taxpayers' money being used to keep hate groups in business is absolutely unacceptable and should concern all who believe in fairness, justice and government accountability". (Complaint, ¶9.a.1). Under the *Zimmerman* standard, this statement clearly carries a defamatory meaning—that HAF is a "hate group" and that it is misusing US taxpayer money. Ahmed argues that this is merely an opinion. However, a statement framed as an "opinion" can still be actionable if it implies facts which are false. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18 (1990) ("If a speaker says, 'In my opinion John Jones is a liar,' he implies a knowledge of facts which lead to the conclusion that Jones told an untruth."); *Moldea v. New York Times Co.*, 15 F.3d 1137, 1144 (D.C. Cir. 1994) ("[A]n unsupported statement of opinion that implies defamatory facts can be actionable...."). Ahmed's labeling HAF as a hate group that is misusing US taxpayer money implies that HAF has engaged in hateful, anti-Muslim conduct and improperly used US taxpayer money. These statements carry defamatory implications. Again, Ahmed himself called the *Newsweek* article "defamatory and libelous" for describing IAMC as an Islamist anti-Hindu hate group. (Ex. 66-67).

Similarly, it has long been established that falsely asserting that a plaintiff is misusing taxpayer money can be actionable as defamation. *See, e.g., Hutchinson v. Proxmire*, 443 U.S. 111 (1979) (holding recipient of government grant had cause of action against politician who

accused him of waste and abuse of public funds).

Ahmed argues that his statement in the Second Story is not actionable because it is not verifiable. This is a fact-bound issue. As *Ollman v. Evans*, 750 F.2d 970, 982 (D.C. Cir. 1984), cited by Ahmed, states, "[s]tatements made in written communication or discourse range over a spectrum with respect to the degree to which they can be verified rather than dividing neatly into categories of 'verifiable' and 'unverifiable'". "[T]he distinction between fact and opinion can therefore be made only in context…The degree to which a statement is 'laden with factual content' or can be read to imply facts depends upon the article or column, taken as a whole, of which the statement is a part." *Id.* Taken in the context of the story, Ahmed's statements in the Second Story are clearly asserting facts, such as that HAF is linked to right-wing Hindu nationalist movements and parties in India, is anti-Muslim, and is misusing taxpayer money. (Complaint ¶29). Ahmed is asking this Court to ignore all of that factual context, but the applicable law says that it must be considered in evaluating his statement.

Ahmed argues that his use of the word "concern" signals to readers that he was expressing an opinion, but the word "concern" appears only after he asserts that U.S. taxpayer money is being used to keep hate groups in business. That statement is not expressed as a concern, but rather as a fact. Again, a statement couched as an opinion can still be actionable if it implies facts which are false.

Ahmed also argues that HAF has not pleaded falsity, but in fact, HAF has done so. (Complaint, ¶¶36, 42). Ahmed has not even attempted to show that these allegations are implausible under the *Iqbal* standard.

Ahmed cites to several authorities holding that the use of hyperbolic labels is sometimes not actionable. However, Ahmed ignores that his statement went further than just using the

words "hate group"—viewed in the context of the entire story, it was an accusation that HAF specifically had ties with right-wing, anti-Muslim Indian political actors. Further, Ahmed, as the participant in a conspiracy, is also responsible for his co-conspirators' statements.

In contrast, cases cited by Ahmed involved situations where the underlying factual claims were true and the only issue was the label, such as "hate group". *E.g., Coral Ridge Ministries Media, Inc. v. Amazon.com, Inc.*, 406 F.Supp.3d 1258, 1269 (M.D. Ala. 2019) ("hate group" label not defamatory where stated reason for designation was truthful claim about group's opposition to gay marriage and gay rights); *Brimelow v. New York Times Co.*, 2020 WL 7405261 at *6 (S.D.N.Y. Dec. 16, 2020) (holding, under New York's broader protection of opinion, that description of plaintiff as "white nationalist" was protected because it was based on disclosed fact of plaintiff's opposition to immigration). Here, the use of the term is clearly connected to underlying false factual statements, such as the claimed links between HAF and Hindu nationalist groups, the claims that HAF is a "front group" for Hindu extremists, the claim that HAF is connected to terrorist groups that have committed anti-Muslim violence and even ethnic cleansing and genocide, and the claim that HAF is misusing taxpayer funds. Ahmed also cites other cases where the usage was clearly figurative, i.e., labeling people "fascists". But, Ahmed at no point said or implied that his use of "hate group" was merely figurative.

Ahmed also argues that he cannot be held responsible for the publication of the Second Story, repeating the same arguments about the insufficiency of the pleading that he made in response to the First Tweet. However, these arguments are without merit. As noted *supra*, HAF both pleads Ahmed specifically caused the publication and/or republication of the Second Story and that he was part of a conspiracy to disseminate all of the misinformation of and concerning HAF that is pleaded in the Complaint. This is sufficient to plead a plausible theory of defamatory

publication under the *Iqbal* standard.

Next, Ahmed argues that HAF is, in fact, associated with Hindu nationalist ideology. This claim moves the goalposts—the defamatory statements do not merely accuse HAF of Hindu nationalism, but of association with right-wing groups, an anti-Muslim ideology, violence, and genocide. Specifically, the quotations that Ahmed identifies on Twitter nowhere say that Ahmed's statements of and concerning HAF are true; at most, they indicate HAF supported the First Amendment rights of Hindu nationalists on college campuses, *see Ahmed Motion to Dismiss* at 23, which is a far cry from the allegations made or caused to be made by Ahmed.

Ahmed also argues that he is not responsible for Truschke's dissemination of the Second Story. However, this was an overt act of the conspiracy, and each member of the conspiracy is responsible for the conspiracy's overt acts, as discussed above. Further, it must be viewed in the context of Ahmed's other statements. While an isolated statement that some groups are using hate and intimidation tactics might be held non-actionable, this statement has to be viewed in the context of the conspiracy's other statements and actions, as part of a coordinated effort to portray HAF as anti-Muslim and connected to Hindu nationalist groups in India.

F. The Remainder of the Statements in the Second Story Are Actionable

Ahmed argues that the statements in the Second Story accusing HAF of supporting Hindu nationalism and having connections to Hindu nationalist groups are true. As noted above, this cannot be litigated on a motion to dismiss: so long as HAF makes a plausible allegation of falsity under *Iqbal*, the issue of falsity is a factual question that cannot be tested on a motion to dismiss. Independently, the only facts he cites in support of this conclusion are tweets in which support was expressed for the **free speech rights** of alleged Hindu nationalists. Those statements do not confirm the inflammatory charges made in the Second Story, and do not refute that HAF has

asserted a plausible claim of defamation under the *Iqbal* standard.

Ahmed also argues that the calls for investigations of the use of taxpayer money in the Second Story are not actionable. However, Ahmed ignores that the Second Story does not merely call for investigations but affirmatively states that money has been misused. Indeed, Ahmed himself is quoted in the Second Story making that accusation. (Complaint, ¶29.a.i). The Second Story also says that groups are "raking in the windfall" of taxpayer largesse. (Complaint, ¶ 29.d.iii). Thus, these facts are not comparable to cases where journalists who asserted in stories that a matter should be looked into or investigated were held to be stating non-actionable opinions. *E.g., Bauman v. Butowsky*, 377 F.Supp.3d 1, 11 (D.D.C. 2019) (statement that plaintiff "deserved serious scrutiny" not actionable).

Next, Ahmed makes the incredible claim that because HAF did not sue on one particular allegation in one of the stories, this "proves" the fact is true and can be judicially noticed to refute other claims the HAF did make. Specifically, Ahmed argues that HAF's mere omission of the First Story's claim about Ramesh Bhutada's son from this lawsuit means that this statement must be taken as true, and that then can be used to "refute" HAF's allegations that it has no links to RSS. Ahmed cites to no law in support of this breathtaking gambit, and there is no basis for it. Fed. R. Evid. 201(b) limits the scope of judicial notice, and does not contain any provision for judicially noticing a "fact" inferred from the failure to plead a specific claim.

Ahmed argues that a pleading cannot be made on information and belief. However, the only published case he cites in favor of this proposition, *Baumel v. Syrian Arab Republic*, 667 F.Supp.2d 39, 49 (D.D.C. 2009), is simply an application of the familiar plausibility rule and holds that implausible, speculative allegations need not be considered by a court. Where the complaint alleges facts that would show that the information related to a particular allegation lies

within the defendant's control, pleading on information and belief is fully permissible in the D.C. Circuit. *Kareem v. Haspel*, 986 F.3d 859, 866 (D.C. Cir. 2021) ("We have recognized that pleadings on information and belief are permitted when the necessary information lies within defendants' control.") (cleaned up). Here, HAF alleges a conspiracy. Obviously, some of the specifics of what was said, and when, and with whom, are going to be within the defendants' control. HAF is therefore permitted to make the allegations on information and belief, and there is no *per se* rule against doing so as argued by Ahmed.

G. HAF Has Alleged Actual Malice

Assuming arguendo HAF is at least a limited purpose public figure, HAF has pleaded actual malice. Ahmed argues that HAF's tax filings and extensive information that is publicly available may be inaccurate; however, this argument misses the point. Any piece of information might, conceivably, be inaccurate, but the issue is what information was known to the defendants at the time the defamatory statements were made. *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968) (actual malice standard satisfied if defendant "entertained serious doubts" at time of publication). The fact that publicly available tax statements do not reflect the facts that were asserted to be true in the Defamatory Statements evidences that Ahmed and his co-conspirators entertained serious doubts as to their truth.

Further, while mere failure to investigate is not sufficient for actual malice, "recklessness may be found where there are obvious reasons to doubt" the truth of the statements. *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 688 (1989). The availability of tax records that are inconsistent with what defendants are claiming would be a source of "obvious reasons to doubt". Moreover, Ahmed controls a non-profit that is required to publicly report the same information that HAF contends he should have investigated prior to publication. *See* (Ex. 100).

Accordingly, it is plausible that Ahmed is personally aware of the information contained in IRS reports regarding 501(c)(3) organizations, and consciously disregarded that information when he and his co-conspirators spoke about HAF. At the very least, this dispute cannot be resolved on the pleadings. Ahmed and his co-defendants may testify that they had no idea about the extensive publicly available information regarding HAF before they decided to defame HAF, or that they discounted it all for one reason or another. But, the only issue at this stage is whether HAF has pleaded a plausible theory of actual malice under *Iqbal*. HAF has done so.

H. HAF Has Sufficiently Pleaded Damages

HAF has alleged defamation *per se* and does not need to allege special damages. "A statement is defamatory as a matter of law ("defamatory per se ") if it is so likely to cause degrading injury to the subject's reputation that proof of that harm is not required to recover compensation." *Franklin v. Pepco Holdings, Inc.*, 875 F.Supp.2d 66, 75 (D.D.C. 2012). Allegations of crimes, or "a matter adversely affecting the person's ability to work in a profession", are among those considered defamation *per se*. *Id.*

Here, the Defamatory Statements accuse HAF of misusing taxpayer funds (a crime) and also of anti-Muslim prejudices and Islamophobia, and misuse of funds, that would tend to interfere with its business by deterring donations. These are sufficient allegations to plead defamation *per se*. In any event, HAF has also alleged special damages, though such allegations are not required. HAF has alleged that it has lost donations or will lose donations. It is well established that lost donations are recoverable by a charity or nonprofit. *Armenian Assembly v. Cafesjian*, 746 F.Supp.2d 55, 66-67 (D.D.C. 2010) (denying motion *in limine* to exclude evidence of lost donations as damages). Ahmed argues for an overspecific pleading standard on special damages. *Conejo v. American Federation of Government Employees*, 377 F.Supp.3d 16,

32 (D.D.C. 2019) held that a defamation complaint that alleged that the plaintiff "has suffered and continues to suffer career damage, loss of consideration for career advancement, personal and professional embarrassment and humiliation, and emotional pain and suffering" and placed a numerical value on those damages was sufficient. HAF need not spell out every lost donation.

VII. LEAVE TO AMEND SHOULD BE GRANTED

A. Leave To Amend Is Required Under the Legal Standard

Ahmed asks that his motion be granted with prejudice. This argument is highly improper and meritless under controlling D.C. Circuit precedent. Under *Firestone v. Firestone*, 76 F.3d 1205 (D.C. Cir. 1996), courts may deny leave to amend only under extremely limited circumstances. "It is an abuse of discretion to deny leave to amend unless there is sufficient reason, such as undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by previous amendments or futility of amendment." *Id.* at 1208 (cleaned up). Ahmed has not even tried to make such a showing. Obviously, there has been no undue delay, bad faith, dilatory motive, or repeated failure to cure deficiencies. Nor is amendment futile. Many of Ahmed's claims involve failure to plead facts with specificity, the exact sort of alleged defect that was at issue in *Firestone*. The Court there held that such defects did not establish futility of amendment.

B. HAF Has Shown It Can Add Additional Relevant Facts To the Complaint

Additionally, the factual section of this motion shows extensive additional evidence supporting the conspiracy allegations, which HAF has adduced in connection with the jurisdictional arguments. *See supra* Section II. HAF therefore clearly has additional facts that it may allege should the Court grant leave to amend. Amendment is in no sense futile. Leave to amend should, and must, be granted should the Court grant the motion.

VIII. CONCLUSION

For the reasons stated herein, the Court should deny Ahmed's motion in its entirety.

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Respectfully submitted,

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