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** **Honorable Amit P. Mehta** (Oral Hearing Requested)

OPPOSITION TO MOTION TO DISMISS BY DEFENDANTS SUNITA VISWANATH AND RAJU RAJAGOPAL

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I. INTRODUCTION

Plaintiff Hindu American Foundation ("HAF") hereby opposes the motion to dismiss filed by Defendants Sunita Viswanath ("Viswanath") and Raju Rajagopal ("Rajagopal"). HAF has sued Viswanath and Rajagopal and their co-defendants Rasheed Ahmed ("Ahmed"), John Prabhudoss ("Prabhudoss"), and Audrey Truschke ("Truschke") (collectively, "Defendants") for defamation and civil conspiracy. For the reasons stated herein, the Court should deny the 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, due to 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 Viswanath, Rajagopal, Ahmed, 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. 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 registration 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 Indian American Muslim Council) 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).

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

Defendant 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 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. 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).

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). Notably, Prabhudoss does not challenge personal jurisdiction in this District.

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

Viswanath, Rajagopal, Ahmed, 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, Viswanath, Rajagopal, Ahmed, 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' entities have a controlling interest in the Coalition and had authority to cause the Coalition's acts and statements at issue in this

[1] *See* Ex. 42 (listing HfHR, IAMC and SAHI as members of the Coalition); Ex. 43 (listing FIACONA as a member of 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.

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) 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, Rajagopal, their 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.2. 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. 76). 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, Viswanath and Rajagopal conspired with their 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 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 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; (b) 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; and (c) Truschke to republish and/or post statements and quotes from First Story on her Twitter account, along with additional false and defamatory statements about HAF. (Complaint, ¶¶26-27; Ex. 2, Chart, Ex. 10-11, 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 Rajagopal, as director and "member" of HfHR; Ahmed, as "executive director of IAMC"; 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 (Complaint, ¶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 Viswanath, Rajagopal and their 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).

Viswanath, Rajagopal, and their 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, Viswanath, Rajagopal and their 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 Viswanath and Rajagopal's motion to dismiss. Viswanath and Rajagopal have engaged in deliberate, purposeful, and affirmative activity within this District for which they could reasonably anticipate being haled into Court for HAF's claims, and HAF has sufficiently stated its claims against them.

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)—Viswanath and Rajagopap "transact business" as "more than employees" of D.C.-based HfHR and as co-conspirators

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 Viswanath and Rajagopal as founders and controlling officers of a D.C.-based entity that is organized in D.C.

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) (*Mouzavires v. Baxter,* 434 A. 2d 988, 992, 995 (D.C.1981)) (internal citation omitted). "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 Viswanath and Rajagopal because, among other things, they are "more than [] employee[s]" of a D.C. based non-profit corporation. They are both founders and controlling officers of HfHR, which is organized under the laws of this District and has thus necessarily availed itself of the privileges and responsibilities of doing business here. (Complaint, ¶10; Ex. 29-33); D.C. Code Ann. § 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, HfHR regularly hosts (often with IAMC) 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. 16-19, 34). HfHR 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 HfHR in its mission and activities, including in D.C. (Ex. 35-39); 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 founders and acting directors of HfHR who control and operate HfHR, it can be

reasonably inferred that Viswanath and Rajagopal are responsible for managing HfHR and overseeing its daily functions, and that they have authority to set company policies and practices or at least has significant influence over them. (Complaint, ¶¶2, 10, 20). The Court can attribute HfHR's connections with the District to Viswanath and Rajagopal. *Nat'l Cmty. Reinvestment Coal.*, 631 F.Supp.2d at 6.

Further, it is apparent that Viswanath and Rajagopal have the authority to speak on behalf of HfHR and to publish and/or issue statements, letters and/or reports on HfHR's behalf, as well as the authority to cause HfHR to publish statements and/or content on its website and Twitter account and elsewhere, in furtherance of HfHR's business, mission, and activities as an advocacy organization—because they regularly do so. (Complaint, ¶¶2, 10, 20; Ex. 16, 30, 34, 81).

Moreover, exercising personal jurisdiction over Viswanath and Rajagopal comports with due process. Conduct and statements by HfHR and by Viswanath and Rajagopal, as HfHR's founders and directors and/or on HfHR's behalf, originate and occur in D.C., HfHR's location and base. (Ex. 29-33); *see also* Section III.C.1 and 3 (discussing location of injury and Viswanath and Rajagopal's tortious acts). Viswanath and Rajagopal, individually and as controlling officers of D.C.-based HfHR, voluntarily and deliberately committed the acts alleged and/or caused HfHR to commit the acts alleged in this case within this District, including conspiring and agreeing with their and HfHR'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., Viswanath and Rajagopal could reasonably anticipate being haled into this Court by HAF even if they were not physically present within the District when they 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 (corporation with no physical presence which targeted contractors like plaintiff who served DC metropolitan 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).

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). Viswanath and Rajagopal, and their 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). Viswanath, Rajagopal, and their 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, Viswanath, Rajagopal and their 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). Viswanath, Rajagopal and their 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 Viswanath's and Rajagopal'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 defendants 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, Viswanath and Rajagopal—as controlling officers of D.C.-based HfHR—"regularly do[]…business" and/or engage in a "persistent course of conduct" in this District under subsection (a)(4) as well. Viswanath and Rajagopal, and HfHR, have longstanding ties with this District, since they first co-founded HfHR in 2019 and organized it under the laws of D.C. at that time. (Ex. 29-31); *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). Viswanath, Rajagopal and their 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 the District. Sunia, Rajagopal and their 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 or "exposé", 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 various 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 Viswanath's and Rajagopal's and their 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 has personal jurisdiction over Viswanath and Rajagopal 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. v. BellSouth Corp.*, 199 F.3d 1343, 1351-1352 (2000) (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) Viswanath's and Rajagopal's respective roles, duties, activities, authorities, and responsibilities with respect to HfHR at all relevant times, including but not limited to, the supervision and oversight of HfHR'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 HfHR's website, Twitter and other platforms (including but not limited to the statements at issue in this case); (b) HfHR'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) Viswanath's and Rajagopal's respective contacts with D.C. in their roles and capacity as founders and officers of HfHR, including but not limited to, their participation in day-to-day internal and external communications and meetings, and participation and involvement with conferences, briefings, events, and/or other functions; (d) Viswanath's, Rajagopal's and HfHR's relationship, role, involvement, duties and responsibilities with respect to the Coalition and D.C. contacts related to such; (e) HfHR's, Viswanath's and Rajagopal's relationships with co-defendants, co-defendants' respective entities and organizations, non-parties Naik and Al Jazeera; and (f) Viswanath's, Rajagopal's and HfHR'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.

IV. 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 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 claim of conspiracy, 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 (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 Capital*

Management LLC v. Muzin, 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 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, and that the Coalition, at their behest, published the false and defamatory statements that were attributed to the Coalition in the stories. (Complaint, ¶¶20, 28). And specifically, 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; *Scott*, 979 F.3d at 988–81; *see also Rawlings v. D.C.*, 820 F.Supp.2d 92, 106-107 (D.D.C. 2011) (held that, 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").

Dowd v. Calabrese, 589 F.Supp. 1206, 1213 (D.D.C. 1984), cited by Viswanath and Rajagopal, does not invalidate HAF's conspiracy claim. *Dowd* merely holds that the normal collaboration between a source and a reporter does not constitute a conspiracy to commit defamation, even if the source has "an axe to grind", because this would make every reporter-

source relationship into a potential conspiracy. "Absent a requirement of such a purpose, the traditionally-recognized relationships between sources and reporters could become actionable as conspiracies on a substantial scale, and the inevitable result would be the 'chilling' of such relationships and collaborations, to the detriment of the values inherent in the First Amendment." *Id.* at 1214. That is not what HAF is alleging here: rather, HAF is alleging that numerous individuals **and** organizations (who are, notably, **not** news organizations) conspired amongst themselves to retaliate against HAF by publishing false statements of and concerning HAF through various media. *Dowd* has nothing to do with this case.

B. Because HAF Has Properly Alleged a Conspiracy, Each Co-Conspirator Is Responsible for the Acts of the Others

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). Discovery will show Viswanath's and Rajagopal's precise involvement in the publication of the Defamatory Statements, but HAF has adequately alleged that they did, indeed, cause their publication.

Thus, if HAF has pleaded a plausible claim for defamation with respect to any statement made by Viswanath, Rajagopal, or another co-conspirator, the motion to dismiss must be denied.

Viswanath and Rajagopal devote a substantial amount of their brief to addressing a straw man: that they did not personally publish or republish a number of the defamatory statements. However, Viswanath and Rajagopal are not only responsible for the statements that they personally published, but for the publications made by their co-conspirators as well. If any such statement gives rise to a plausible claim for defamation, that is sufficient to deny the motion to dismiss, even if the statement was not published or republished by Viswanath or Rajagopal personally.

C. The Statements Alleged by HAF have a Defamatory Meaning and are Not Protected Opinion

"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* test, the statements made by Defendants are capable of defamatory meanings. They portray HAF as an extremist, racist, ethnocentric organization with ties to bad actors in India and which misuses American taxpayer dollars. They claim that HAF is a Hindu right wing group. Such claims, if shown to be false at trial, will constitute defamation.

Viswanath and Rajagopal argue that the statements are merely opinions. However, there is no categorical First Amendment protection for anything labeled an "opinion": rather, even a statement that is expressly 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....").

The conspiracy's statements of and concerning HAF are not mere opinions: they either state or imply facts. The allegation that an organization misuses U.S. taxpayer money is a factual

allegation which may be litigated in a defamation suit. *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). Claims that HAF has connections to hate groups in India are also capable of being proven true or false (and can be verified as false through examination of public records) and are not matters of opinion.

Viswanath and Rajagopal argue that the statements were in fact not verifiable, because they also include terms like "Hindu supremacist" and "hatred". However, even assuming arguendo that simply using an epithet to describe a plaintiff would generally be an opinion, Viswanath and Rajagopal are ignoring the difference between expressing dislike for HAF and claiming that it is connected to other groups that it is not connected to, or that it is misusing U.S. taxpayer dollars. **Those** claims are verifiable and factual, even if merely using derogatory language to describe HAF might not be.

Viswanath and Rajagopal also argue that the statements of the conspirators are opinions based on disclosed facts. Where the defendants in a defamation disclose the facts on which they base their opinion in the publication, the opinion can be held to be protected speech. *Abbas v. Foreign Policy Group*, 975 F. Supp. 2d 1, 16 (D.D.C. 2013). However, once again, Viswanath and Rajagopal perform the slight of hand of relying on statements made by Al Jazeera reporters, who are not alleged to be conspirators, to provide the "factual disclosure". The issue is not what journalists said, but what the conspirators said. There is no material in the record that may be properly considered here that would show that Viswanath, Rajagopal, or any other **conspirator** provided the factual disclosure necessary to immunize the defamatory statements as "opinion". What Al Jazeera may have done is irrelevant. *See, e.g., Piccone v. Bartels*, 785 F.3d 766, 771 (1st Cir. 2015) (stating the rule as "**the speaker** can immunize his statement from defamation

liability by fully disclosing the non-defamatory facts on which his opinion is based") (emphasis added).

Additionally, the "disclosed facts" upon which Viswanath and Rajagopal rely (which purport to show connections between HAF and Hindu nationalists in India) are themselves disputed. Specifically, the Complaint pleads "HAF has no affiliation or ties to any organizations or political parties in the U.S. or abroad, and is not a member or subsidiary of Rashtriya Swayamsevak Sangh... or any alleged Hindu nationalist or supremacist group in India. HAF does not contribute any funds, whether COVID relief or otherwise, to in any way subvert minorities and/or spread Hindu nationalism and supremacy in India. HAF does not provide money to RSS or anyone affiliated with RSS. No HAF staff or board member, or any other person authorized to speak on behalf of the organization has made or been involved in making violent threats against Defendant Truschke." (Complaint, ¶36). **These plausible statements must be taken as true in this proceeding.** Thus, the "disclosed facts" that Viswanath and Rajagopal are purporting to rely on are themselves disputed and, HAF contends, defamatory. *See Milkovich v. Lorain Journal*, 497 U.S. 1, 18-19 (1990) ("Even if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact.").

Viswanath and Rajagopal also claim, in the alternative, that the defamatory statements do not state or imply any facts. While Viswanath and Rajagopal state the correct legal standard for evaluating this issue, they misapply it. The standard is whether the statement "has an explicit or implicit factual foundation and is therefore 'objectively verifiable". *Washington v. Smith*, 80 F.3d 555, 556 (D.C. Cir. 1996). Indeed, *White v. Fraternal Order of Police*, 909 F.2d 512, 522 (D.C. Cir. 1990), cited by Viswanath and Rajagopal, holds that statements implying that the plaintiff

used illegal drugs and committed bribery can be actionable, even if they do not state it outright. *Id.* at 522-23. Whether HAF misused U.S. taxpayer dollars, and whether and what connections it has to particular groups in India, are objectively verifiable facts. The "opinion" claim fails.

The result is the same if one applies the (likely outdated) test in Judge Kenneth Starr's majority opinion in *Ollman v. Evans*, 750 F.2d 970 (D.C. Cir. 1984) (en banc).[2] Those four factors are (1) the common usage of the terminology, (2) verifiability, (3) the immediate context of the statement, and (4) the larger social context. Of these factors, three of them tilt decisively in HAF's favor, and the fourth is insufficient to justify finding the statements to be non-actionable. The common meaning of the words used by the conspirators expresses clearly the claims that HAF has actual connections to anti-Muslim right wing hate groups in India and that it is misusing taxpayer money. These claims are verifiable, as discussed above. And the immediate context of these statements makes the impact of their defamatory content stronger, because they are presented without providing any other information of and concerning HAF that might mitigate or make clear that these statements are just contested beliefs that some people hold about HAF, as oppose to factual statements about the group.[3] Only the larger social context- the

[2] The *Ollman* test predates the U.S. Supreme Court's decision in *Milkovich*, which rejected the proposition that there was a freestanding privilege for defamatory "opinion" under the First Amendment. Thus, the *Ollman* test is unlikely to be good law. "In *Milkovich*, the Supreme Court rejected a multi-factor text previously used in *Ollman* and other cases to distinguish fact from opinion." *Guilford Transportation Industries, Inc. v. Wilner*, 760 A.2d 580, 583 (D.C. 2000).

[3] Viswanath and Rajagopal misconstrue this test by arguing that any defamatory statements should be taken in the factual context of the entire news articles. However, the Complaint does not allege that the articles were written by the conspirators. Accordingly, it is **the statements of the conspirators** that must provide the required context. There is no material in the record and cognizable on this motion to dismiss that shows that the co-conspirators contextualized their statements.

Nor does the use of the word "concern" or "might" immunize any defamatory statements. Is Viswanath's case, those words were apparently inserted by a news reporter not alleged to be part

fact that this is arises in the context of political debates about India- might arguably tilt the other way, but cases such as *Hutchinson* (which involved a politician's campaigns against what he thought to be wasteful government spending) make clear that there is no blanket privilege to defame people even if the context is determined to be political.

The cases cited by Viswanath and Rajagopal involve actual opinions and are clearly distinguishable. *E.g.*, *Washington*, 80 F.3d at 556 (claim that basketball coach "usually finds a way to screw things up" is an opinion); *Rosen v. American Israel Public Affairs Committee*, 41 A.3d 1250, 1256 (D.C. 2012) (statement that employee did not comport himself with organization's standards was opinion when there were no written standards for the organization's employees that the statement could have referred to); *Farah v. Esquire Magazine*, 736 F.3d 528, 534 (D.C. Cir. 2013) (website that made obviously outrageous satirical claims could not be viewed as a reasonable reader as factual).

Nor are the defamatory statements of the conspiracy falsely accusing HAF of connections to extremist groups and of misusing taxpayer funds protected "rhetorical hyperbole". "Statements characterized as rhetorical hyperbole are not actionable in defamation because they cannot reasonably be interpreted as stating actual facts about an individual." *Carpenter v. King*, 792 F. Supp. 2d 29, 37 (D.D.C. 2011). The classic example of rhetorical hyperbole was the use of the word "blackmail" to describe labor negotiation tactics in *Greenbelt Cooperative Publishing Ass'n v. Bresler*, 398 U.S. 6, 14 (1970). Nobody reading such a claim would actually think that the labor negotiators were committing the crime of blackmail; it is merely rhetoric.

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of the conspiracy, to characterize Viswanath's statements. She did not utter them and instead made categorical statements about HAF's "parent organization", i.e., she expressed the factual claim that HAF had a relationship with extremist groups in India. There was no "concern" or "might" in those statements by Viswanath.

However, Viswanath and Rajagopal has not shown that the conspiracy's defamatory statements of and concerning HAF where mere rhetoric. The statements allege actual connections between HAF and Hindu right wing groups in India, and actual misuse of U.S. taxpayer funds. For the reasons stated above, these are a claims a reader would take to be factual.

D. HAF has Alleged Substantial and Material Falsity

Viswanath and Rajagopal's argument that the false statements are "minor" and not material is based on a complete mischaracterization of what was published. Viswanath and Rajagopal argue that the false statements merely accuse HAF of being sympathetic to Hindu nationalist organizations. However, that is not what the defamatory statements say: rather, HAF is accused of misusing taxpayer funds and having formal relationships with highly controversial, ostensibly anti-Muslim organizations in India. These are not mere accusations about HAF's sympathies or politics, but serious claims of misconduct and of formal association with bad actors in India. Viswanath and Rajagopal make no serious argument that this sort of defamatory accusation fails to clear the materiality bar.

E. The Defamatory Statements are Of And Concerning HAF

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 defamatory statements made by the conspirators and described in the Complaint are clearly

referencing HAF, even when they do not mention HAF by name. Thus, the "of and concerning" requirement is satisfied.

Viswanath and Rajagopal's argument ignores the controlling authority on this issue and claims that so long as HAF is not named specifically, the statements cannot be "of and concerning" HAF. This argument, contrary to controlling D.C. Circuit precedent, must be rejected.

Viswanath and Rajagopal's only other argument is that by naming a category of "American non-profits", one of the statements cannot be deemed to be "of and concerning" HAF, because defamation of a group does not necessarily defame an individual, as held in *Alexis v. Williams*, 77 F. Supp. 2d 35, 40 (D.D.C. 1999). *Alexis* deals with a totally different issue, though: the doctrine announced in *Alexis* bars, for instance, a plaintiff from arguing that because someone made a defamatory statement about the Elks Lodge, any member of the Lodge could bring a suit for defamation. It is essentially a standing rule: an injury to an organization is not necessarily an injury to an individual member.

But that is entirely different from a situation where defendants make statements that clearly refer to the plaintiff, but just do not use the plaintiff's name. Nothing in *Alexis* bars the current action.

F. <u>The Statements were made with Actual Malice</u>

Assuming arguendo HAF is at least a limited purpose public figure, HAF has pleaded actual malice. HAF pleads that the co-conspirators were aware of the public filings of HAF and thus knew that its claims of connections to Indian groups and misuse of taxpayer funds were false. (Complaint, ¶¶ 38-39). This is a plausible theory of actual malice.

Viswanath and Rajagopal argue that each defendant must be individually alleged to have the subjective mindset of actual malice, but this ignores that HAF pleads a conspiracy and that each co-conspirator is responsible for the other co-conspirators' acts. Thus, if any co-conspirator published a statement with actual malice, all co-conspirators are responsible for it. Specifically, Viswanath, Rajagopal and Ahmed, who is a co-conspirator of Viswanath and Rajagopal, all run 501(c)(3) nonprofits (HfHR and IAMC). Therefore, each of them has extensive information about how tax exempt groups such as HAF function and the public filings they are legally required to make, and would have had knowledge as to HAF's actual finances and the fact that it was not misusing taxpayer funds and did not have the alleged connections to controversial organizations in India that he alleged at the time they made defamatory statements.

Specifically, while (as Viswanath and Rajagopal point out) mere failure to investigate is not sufficient for actual malice, "recklessness may be found where there are obvious reasons to doubt". *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". Again, Viswanath, Rajagopal and Ahmed control non-profits that are required to publicly report the same information that HAF contends they should have investigated prior to publication. *See* (Ex. 8-10, 29-31, 100). Accordingly, it is plausible that Viswanath, Rajagopal and Ahmed were personally aware of the information contained in IRS reports regarding 501(c)(3) organizations, and consciously disregarded that information when they spoke about HAF.

Viswanath and Rajagopal cite the rule that the plaintiff's mere denials of the truth of a statement do not necessarily establish actual malice. However, it is disingenuous to characterize government filings, filed under threat of extensive penalties for false statements, are the

equivalent of a plaintiff's denial of the falsity of a statement in a demand letter. Certainly Viswanath and Rajagopal have not cited a case that so holds.

Finally, Viswanath and Rajagopal's argument that allegations of the co-conspirators' ill will towards HAF do not support a claim of actual malice is overstated. While ill will alone will not establish actual malice, it can be used in conjunction with other evidence to show a willingness to publish unsupported allegations. *Jankovic v. International Crisis Group*, 822 F.3d 576, 590 (D.C. Cir. 2016). This DC Circuit case controls over the unpublished District Court cases cited by Viswanath and Rajagopal. Thus, the Court may consider the co-conspirators' ill will towards HAF to the extent it shows a willingness to publish falsehoods of and concerning HAF.

At the very least, this dispute cannot be resolved on the pleadings. 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 the *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), standard. HAF has done so.

G. HAF has Adequately Alleged Damages

Viswanath and Rajagopal's arguments on damages fail for two reasons: HAF has pleaded defamation *per se*, which is actionable without an allegation of special damages, and HAF has also pleaded loss of donations, which are cognizable as special damages.

"Defamation *per se* occurs when a defendant makes a statement so likely to cause degrading injury to the subject's reputation that proof of harm is not required to recover compensation." *Safex Foundation v. Safeth, Ltd.*, 2021 WL 1167266 at *12 (D.D.C. Mar. 26, 2021) (cleaned up). "The essence of defamation *per se* is the publication of false statements

imputing to a person a criminal offense; a loathsome disease; matter affecting adversely a person's fitness for trade, business, or profession; or serious sexual misconduct." *Id.* (citing *Carey v. Piphus*, 435 U.S. 247, 262 n. 18 (1978)). In this case, the defamatory statements clearly impugn HAF's fitness for its trade, business, or profession- they smear HAF's reputation and portray HAF as an extremist organization that has formal relationships with bad actors in India and which misuses taxpayer funds. Such accusations are poisonous for any organization that subsists on donations. Thus, no allegation of special damages is required. *Washington Times Co. v. Bonner*, 86 F.2d 836, 844 (D.C. Cir. 1936).

However, even if there were a special damages pleading requirement, HAF has pleaded them. HAF has pleaded lost donations. (Complaint, ¶¶6, 35, 44). Lost donations are cognizable damages for a non-profit plaintiff in a defamation case. *See, e.g., Hearts with Haiti, Inc. v. Kendrick*, 2015 WL 4065185 at *3 (D. Maine Jul. 2, 2015) ("As a result of Mr. Kendrick's alleged defamatory statements, however, it claims that it has lost donations. HWH may present evidence at trial to prove this allegation.").

The case cited by Viswanath and Rajagopal, *Xereas v. Heiss*, 933 F.Supp.2d 1, 19 (D.D.C. 2013), is distinguishable. *Xereas* rejected a pleading that defamatory statements "harmed Plaintiff, his personal and professional reputation and his future business prospects". In contrast, HAF has alleged specifically that it lost donations.

In any event, if there is any doubt as to HAF's pleading, it should be granted leave to amend to set forth more information about its damages.

V. LEAVE TO AMEND SHOULD BE GRANTED

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). Viswanath and Rajagopal have 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 Viswanath and Rajagopal'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.

Additionally, the factual section of this opposition 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 to dismiss.

VI. CONCLUSION

For the foregoing reasons, Viswanath's and Rajagopal's motion should be denied in its entirety. Should any part be granted, the Court should grant leave to amend.

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Respectfully submitted,

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