

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HINDU AMERICAN FOUNDATION

Plaintiff,

v.

SUNITA VISWANATH;  
RAJU RAJAGOPAL;  
RASHEED AHMED;  
JOHN PRABHUOSS;  
AUDREY TRUSCHKE; AND  
DOES 1-20,

Defendants.

Civil Action No. 1:21-cv-01268-  
APM

**OPPOSITION TO DEFENDANT AUDREY TRUSCHKE'S MOTION TO DISMISS**

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**I. INTRODUCTION**

Plaintiff Hindu American Foundation (“HAF”) hereby opposes the motion to dismiss filed by Defendant Audrey Truschke (“Truschke”). HAF has sued Truschke and her co-defendants Sunita Viswanath (“Viswanath”), Raju Rajagopal (“Rajagopal”), Rasheed Ahmed (“Ahmed”), and John Prabhudoss (“Prabhudoss”) (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, para. 4; Doc. 5-6; Doc. 37-2, para. 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. (Comp., ¶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. Co-Defendants Viswanath, Rajagopal, Ahmed, and Prabhudoss are controlling officers of D.C. entities that work closely together with 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 LinkedIn). 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). Ahmed further wrote: “[I]t is **not ‘Chicago’s’ IAMC. IAMC is registered in Washington, D.C.**” (Ex. 12).

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). Truschke has confirmed that she knows that IAMC is an

organization based in D.C. (Doc. 36-2, Truschke Dec., ¶15f).

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 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.<sup>1</sup> (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.

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<sup>1</sup> 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.

(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, 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.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](http://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. 76-77). 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, Truschke conspired with her 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](http://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" in India, 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](http://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, 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](http://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!" (Complaint, ¶¶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 Truschke and her 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).

Truschke and her 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, Truschke and her 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 Truschke's motion to dismiss. Truschke has engaged in deliberate, purposeful, and affirmative activity within this District for which she 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 D.C. Code §13-423(a).

**B. Section 13-423(a)(1)—Truschke “transacted business” 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).

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). Truschke and her co-defendants/co-conspirators 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). Truschke and her co-defendants also have a history of attacking and disparaging HAF as a shared adversary. (Ex. 60-63).

Based on these inter-connected relationships and this common history, and their conspiracy to deflect criticism from themselves and onto HAF, Truschke and her co-defendants 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 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 the same), and to cause the Coalition to rely on the First Story to call for an SBA investigation of HAF and these D.C.-based events. Truschke knew that her co-defendants/co-conspirators' 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 her co-defendants as representatives, controlling officers, and/or members of those 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; *see also* Doc. 36-2, Truschke Dec., ¶15f).<sup>2</sup>

**C. Section 13-423(a)(3) – Act causing tortious injury in D.C.**

Section 13-423(a)(3) 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---causing tortious injury in the [District] by an act or omission in the District...”

1. Injury within this District

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 Truschke’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]

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<sup>2</sup> Any factual discrepancies allegedly created by Truschke’s blanket claim that she supposedly “first learned” of the stories via Twitter must be resolved in HAF’s favor. *Lewy*, 723 F.Supp.2d at 118–19.

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. Act or omission in the District

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). Truschke—as a board member and/or advisor of a controlling member of the D.C.-based Coalition—caused the D.C.-based Coalition’s statements in the Second Story. (Complaint, ¶¶21, 28). These acts and statements occurred in this District because they originated from a D.C.-based entity/Coalition, were made to the D.C. branch of Al Jazeera for publication in a story reported from Washington, D.C. about a D.C.-based entity, HAF, and events and subject matter in D.C. (disbursement of Covid-19 relief funds to a D.C.-

based HAF that is involved in public affairs and public policy advocacy in D.C. and an SBA investigation of the same). (Complaint, ¶¶3, 23, 27, 30-31, 33-34).

**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 F.3d 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); *accord Second Amend. Found.*, 274 F.3d at 525. 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) Truschke's role duties, activities, authorities, and responsibilities as a board member of SAHI at all relevant times, including but not limited to, in connection with SAHI's membership, control and authorities with respect to the Coalition and contacts with D.C. related thereto; (b) Truschke's relationships with co-defendants, co-defendants' respective entities and organizations, non-parties Naik and Al Jazeera; (c) Truschke'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 (d) the issues and purported claims in Truschke's declaration in support of her motion to dismiss, including but not limited to, when and how she learned about the "Stories".

#### **IV. THE MOTION TO DISMISS SHOULD BE DENIED ON ITS MERITS**

##### **A. HAF Has Stated a Claim for Civil 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 (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 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 Truschke and her co-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 own acts and onto HAF as a common foe; that 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; *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”).

Truschke, like her co-conspirators, compares this case to *Acosta Orellana v. CropLife Int’l*, 711 F.Supp.2d 81, 113-14 (D.D.C. 2010), but in *Acosta Orellana*, there were no allegations that the defendants were actually working together. In the case at bar, there are many such allegations, and substantial support for such allegations.

**B. Truschke Is Responsible for All the Acts of Her Co-Conspirators**

Truschke focuses narrowly on the conduct that she is alleged to have personally engaged in, but this Court must consider not only that conduct, but also the defamatory statements made by her 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). Discovery will show Truschke’s precise involvement in the publication of the statements, but HAF has adequately alleged that she did, indeed, cause their publication.

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

**C. HAF Has Pleaded a Plausible Allegation of Actual Malice**

Truschke argues that HAF fails to make a plausible allegation of actual malice. However, as noted above, if any of the statements, made by any of the conspirators, were made with actual malice, Truschke is responsible for those statements. Assuming *arguendo* that HAF is at least a limited purpose public figure, HAF has pleaded a plausible allegation of actual malice under this standard.

HAF has alleged that there are extensive public records that were available to members of the conspiracy, including Truschke, that establish the truth, i.e. that HAF did not have the connections to anti-Muslim groups in India and were not misusing US taxpayer funds as the conspirators claimed. Specifically Truschke's co-conspirators, Ahmed, Viswanath and Rajagopal run a 501(c)(3) charities that are required to file the same types of publicly available documents that HAF files, and thus well knows about these documents, how to find them, and what they contain. Thus, the conspirators recklessly disregarded the truth in publishing their claims. “[R]ecklessness may be found where there are obvious reasons to doubt.....” *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 688 (1989); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 332 (1974) (standard for recklessness is “high degree of awareness of probable falsity”).

The fact that Truschke conspired with the other Defendants distinguishes her cases. Truschke argues that she had the right to rely on the published stories that were published by her co-conspirators. *Truschke Bf.* at 27. However, none of the authorities Truschke cites involves a conspiracy allegation; rather, they stand for the proposition that a speaker may rely on the publications of independent third parties. For instance, *Liberty Lobby, Inc., v. Dow Jones & Co.*, 838 F.2d 1287, 1297 (D.C. Cir. 1988), involved an author's reliance on sources published 13

years earlier that the author obviously had nothing to do with. *Montgomery v. Risen*, 197 F. Supp. 3d 219, 260 (D.D.C. 2016), was decided on summary judgment (**not** the pleadings) and the reporter had given sworn testimony that he relied on specific earlier published reports making the same claims—there was no evidence of a conspiracy. In *Berisha v. Lawson*, 973 F.3d 1304, 1313 (11th Cir. 2020), the defendant relied on “numerous published reports” in making the alleged defamatory statements; again, there was no allegation that the defendant conspired with anyone publishing the prior statements.

*McFarlane v. Esquire Magazine*, 74 F.3d 1296, 1305 (D.C. Cir. 1996), cited by Truschke, is illustrative of how these cases are distinguishable. It cites the legal rule as involving reliance on a reporter’s reputation: “Reliance on a reporter’s reputation can indeed show a lack of actual malice by a publisher.” *Id.* But a co-conspirator isn’t relying on the original reporter’s reputation; rather, they are working together to spread disinformation.

Truschke also argues that the Court cannot consider her animus towards HAF because she has a First Amendment right to dislike HAF. This completely misconstrues the First Amendment, which is not an evidence exclusion rule: no case holds that one’s speech or thoughts cannot be considered as evidence in a proceeding where relevant. *See, e.g., Wisconsin v. Mitchell*, 508 U.S. 476, 490 (1993) (upholding hate crime statute that allows admission of evidence to show that defendant’s acts were based on political beliefs: “The First Amendment, moreover, does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent.”) (citing *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251-52 (1989) (plurality) (allowing admission of evidence of employer’s protected views on gender to show discrimination)).

With respect to the defendant's ill will towards the plaintiff in a defamation case, the rule is clear: ill will alone will not establish actual malice, but 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). Truschke cites two District Court cases, *Arpaio v. Zucker*, 414 F. Supp. 3d 84, 92 (D.D.C. 2019), and *Parsi v. Daiouleslam*, 890 F.Supp.2d 77, 90 (D.D.C. 2012), that seem to imply that the defendant's ill will is completely irrelevant, but that are inconsistent with the standard that was applied by the D.C. Circuit in *Jankovic*. Thus, the Court may consider Truschke's ill will towards HAF to the extent it shows a willingness to publish falsehoods of and concerning HAF.

**V. LEAVE TO AMEND SHOULD BE GRANTED**

**A. Leave To Amend Is Required Under the Legal Standard**

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).

**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 to dismiss.

**VI. CONCLUSION**

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

Dated: October 22, 2021

Respectfully submitted,

By: /s/ Ryan J. Stonerock

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