IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HINDU AMERICAN FOUNDATION,
Plaintiff,

v.

SUNITA VISWANATH, ET AL.,
Defendants.

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

ORAL HEARING REQUESTED

Honorable Amit P. Mehta

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT AUDREY TRUSCHKE'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Eric J. Feder (D.C. Bar No. 996955)
Davis Wright Tremaine LLP
1301 K Street NW
Suite 500 East
Washington, D.C. 20005-3317
(202) 973-4200
(202) 973-4499 (fax)
ericfeder@dwt.com

Jared Carter (admitted *pro hac vice*)
Christina Neitzey
(*pro hac vice* application forthcoming)
Cornell Law School First Amendment Clinic
Cornell University
Myron Taylor Hall
Ithaca, NY 14853-4901
(207) 319-6050
jc2537@cornell.edu
cn266@cornell.edu

Attorneys for Defendant Audrey Truschke

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Defendant Audrey Truschke ("Professor Truschke") respectfully submits this memorandum of points and authorities in support of her motion to dismiss the complaint for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2) and for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6).

PRELIMINARY STATEMENT

Professor Truschke is a respected scholar of South Asian History, with deep expertise in India's religious and political landscape from the 1500s through today. She is also an activist, applying her scholarly expertise to speak out against human rights abuses and advance principles of tolerance and pluralism. This suit is part of a sustained attack on Professor Truschke's scholarship and activism by her critics. More broadly, this is a case about protecting academic freedom, political debate, and critical inquiry. Plaintiff seeks to silence Professor Truschke through frustrating her research and suffocating her activism. But our judicial system is not meant to be weaponized in such a way. As Professor Truschke's employer Rutgers University recognized earlier this year, following a spate of online harassment against her: "Scholarship is sometimes controversial, perhaps especially when it is at the interface of history and religion," areas where Professor Truschke's scholarship and activism frequently focuses. Rutgers continued: "[B]ut the freedom to pursue such scholarship, as Professor Truschke does rigorously, *is at the heart of the academic enterprise*." Rutgers-Newark (@Rutgers_Newark) Twitter (Mar. 8, 2021, 7:59 PM), https://twitter.com/Rutgers_Newark/status/1369090536573911043 (emphasis added). Similarly, the Supreme Court has recognized that academic freedom is "a special concern of the First Amendment," in part because the "[n]ation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth." *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967) (citation omitted).

Beyond the impact on Professor Truschke, Plaintiff's suit also threatens to chill scholars across the country who might dare to publish anything critical of a government, political party, or religion, or who may engage in political activism alongside their scholarship. The ability to engage in these activities without fear of unjustified reprisal is critical to the pursuit of truth and knowledge. Indeed, participation in contentious political debate lies at the very heart of the First Amendment, and is what animates the extremely high standards that a "public figure" plaintiff must meet in order to survive dismissal of a libel suit. The First Amendment promises the "opportunity for free political discussion" and guards the "prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions." *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964) (citations omitted); *see also Carey v. Fed. Election Comm'n*, 791 F. Supp. 2d 121, 133 (D.D.C. 2011).

The legal deficiencies of Plaintiff's complaint are straightforward. First, this Court lacks personal jurisdiction over Professor Truschke. Professor Truschke is a resident of New Jersey and has had minimal contacts with the District of Columbia. Under the District of Columbia's long-arm statute, this Court does not have jurisdiction over Professor Truschke for an alleged action outside the District unless Plaintiff can allege and show that she "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 of Columbia" – which courts refer to as a "plus factor" – beyond the actions giving rise to the claims. D.C. Code § 13-423(a)(4). Plaintiff makes no attempt to plead facts to establish such a "plus factor," and no sufficient connections exist. Plaintiff has never lived or worked in the District, and she has had only sporadic contact with the District over the past ten years. And even if Plaintiff could satisfy any provision of the long-arm statute (and it cannot), exercising personal jurisdiction over an out-of-

state individual merely for posting a handful of tweets referring to an organization that happens to be located in the District would be inconsistent with well-established principles of due process. Accordingly, Professor Truschke is not subject to this Court's jurisdiction in this suit.

Plaintiff's complaint separately fails because it does not state a claim upon which relief can be granted. Plaintiff—a public advocacy organization that is indisputably a "public figure" for purposes of this libel suit—must allege facts that plausibly establish that Professor Truschke made the statements at issue with knowledge that they were false or with subjective doubts as to their truth – the "famously 'daunting'" constitutional actual malice standard. *Tah v. Glob. Witness Publ'g, Inc.*, 991 F.3d 231, 240 (D.C. Cir. 2021) (citation omitted), *pet. for cert. docketed*, No. 21-121 (U.S. July 28, 2021). Plaintiff does not set forth any such factual allegations regarding Professor Truschke (because none exist), and its defamation claim therefore fails as a matter of law. And, in any event, the statements at issue comprise subjective opinions expressed in the context of a contentious political debate, not facts that could be objectively proven true or false, as required for a viable libel claim.

Lastly, the facially absurd conspiracy claim against Professor Truschke fails with the defamation claim. It also fails because Plaintiff does not come remotely close to alleging facts that support the existence of any kind of agreement among the Defendants, as required for a conspiracy claim to survive a motion to dismiss.

For these reasons, the causes of action against Professor Truschke should be dismissed in full with prejudice.

STATEMENT OF FACTS

I. THE PARTIES

A. Defendant Audrey Truschke

Professor Truschke is an Associate Professor of South Asian History and Director of the Asian Studies Minor at Rutgers University in Newark, New Jersey. Declaration of Defendant Audrey Truschke in Support of 12(b)(2) Motion to Dismiss ("Truschke Decl.") ¶ 4; *see also* Compl. ¶ 21. Professor Truschke's research, writing, and teaching focus on the cultural, imperial, and intellectual history of early modern and modern India, including India's religious and political history. Truschke Decl. ¶ 5. In recent years, Professor Truschke's scholarship and activism have expanded to include topics concerning Hindu nationalism, or Hindutva. *See id.* ¶¶ 6-11.

Professor Truschke uses Twitter regularly, and posts frequently about issues of professional interest and personal concern to her. *Id.* ¶ 12. Hindutva is one topic she regularly comments on via Twitter, including Hindutva's impact in the United States, its implications for religious minorities in India, and its distinctions from Hinduism as a religion. *Id.* ¶ 13; *see also* Dr. Audrey Truschke (@AudreyTruschke) Twitter (Nov. 7, 2020, 7:58 AM), https://twitter.com/AudreyTruschke/status/1325059948414459904 (posting link to article titled "Annoy the [Hindutva] Alt-Right in the U.S., today, and you could get 'swatted,'" and commenting: "A history professor researched #Savarkar. He has been harassed for decades, culminating, recently, in a SWAT team arriving at his parents' house in the US. Reminders: #Hindutva is violent; there aren't two sides to this debate; Hindutva is not Hinduism.");[1]

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[1] On a Rule 12(b)(6) motion, in considering "whether a complaint states a claim, the court may consider the facts alleged in the complaint, documents attached thereto or incorporated therein, and matters of which it may take judicial notice." *Farah v. Esquire Magazine*, 736 F.3d

Dr. Audrey Truschke (@AudreyTruschke) Twitter (May 19, 2021, 6:52 PM – 6:53 PM), https://twitter.com/AudreyTruschke/status/1395150351221895169 (posting link to factsheet published by Georgetown University's Bridge Initiative, and commenting: "Georgetown's Bridge Initiative publishes a fact sheet about the #RSS. It covers the RSS's violent history, hateful ideology, links with other hate (e.g., anti-Semitism, white nationalism), targeting of religious minorities . . . [the] factsheet also includes 3 full paragraphs on links between the RSS and the Hindu American Foundation, a US-based group."). HAF's defamation claim against Professor Truschke arises out of several such tweets.

In March of this year, amid a deluge of online harassment of Professor Truschke, violent threats against her, and demands that Rutgers censure her and suspend her from teaching, the university issued a statement stating that "Rutgers emphatically supports Professor Truschke's academic freedom in pursuing her scholarship, abhors the vile messages and threats that are

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528, 534 (D.C. Cir. 2013) (citation omitted). The Court can therefore consider the publications and other documents that Plaintiff quotes and relies on – and therefore incorporates by reference in – its Complaint. *See, e.g.*, Compl. ¶ 21 (citing, *inter alia*, "letter to Rutgers University in March 2021" and "an opinion article" published in April 2021). In addition, under well-settled law in this Circuit, the Court may consider "readily available, judicially noticeable" news coverage, including Internet postings, showing the broader context in which the statements at issue in a libel case were made. *Deripaska v. Associated Press*, 282 F. Supp. 3d 133, 140, 146 (D.D.C. 2017) (explaining that "[j]udicial notice is properly taken of publicly available historical articles," and considering news coverage of plaintiff Russian oligarch to grant motion to dismiss libel claim); *see also Fairbanks v. Roller*, 314 F. Supp. 3d 85, 88 n.1 (D.D.C. 2018) (taking judicial notice of Internet postings and "news articles" to establish existence of "ongoing public debate" about meaning of "okay" hand symbol in libel case); *Farah v. Esquire Magazine*, 863 F. Supp. 2d 29, 35 (D.D.C. 2012), *aff'd*, 736 F.3d 528, 534 (D.C. Cir. 2013) (affirming appropriateness of taking judicial notice on Rule 12(b)(6) motion of a broad range of materials, including "various internet postings," to establish the political context of satirical article related to President Obama "birther" controversy). Accordingly, the Court can take judicial notice of public social media postings and online articles by the parties, and may consider them on this motion "not for their truth, but merely to show that those statements were made," in order to establish the broader context in which the statements at issue were made. *Fairbanks*, 314 F. Supp. 3d at 88 n.1.

being directed at her, and calls for an immediate end to them." Rutgers-Newark (@Rutgers-Newark) Twitter (Mar. 8, 2021, 7:59 PM), https://twitter.com/Rutgers_Newark/status/1369090536573911043. *See also* Compl. ¶ 21 (referencing "letter to Rutgers University in March 2021 supporting Defendant Truschke against various criticisms by student groups").

Professor Truschke does not reside – and has never resided – in the District of Columbia ("District"): she resides in Hoboken, New Jersey, and has lived there since 2016. Compl. ¶ 12; Truschke Decl. ¶ 3.[2] Over the past ten years, Professor Truschke has had only sporadic and limited contacts with the District. *Id.* ¶¶ 14-15.[3] Professor Truschke wrote and posted the tweets at issue from New Jersey. *Id.* ¶ 16.

B. Plaintiff Hindu American Foundation

Plaintiff Hindu American Foundation ("Plaintiff" or "HAF") is a 501(c)(3) organization headquartered in Washington, D.C. Compl. ¶ 7. HAF describes its work as focused on public education and advocacy, working with journalists, educators, and policymakers to "champion issues of concern to Hindu Americans." *Id.* ¶ 19.

For years, HAF has commented publicly on Professor Truschke's scholarship and activism. For example, in 2018, HAF posted an article about her on its website titled: "Truschke

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[2] Prior to that, Professor Truschke lived in California and the United Kingdom. Truschke Decl. ¶¶ 3-4.

[3] Those contacts are limited to the following: (1) approximately six visits in 2012 and 2013 to visit her husband while he was clerking for Justice Ruth Bader Ginsburg, (2) three additional, brief visits for social reasons since then, (3) intermittent email correspondence with the curator of the Freer Sackler Gallery related to Professor Truschke's research, (4) recognition for a book award at a conference in the District, which she did not attend in person, and (5) three talks related to her research at events hosted by District-based organizations (none of which Professor Truschke attended in person in the District). Truschke Decl. ¶ 15.

on Twitter: Academic Sensationalism Trumps Academic Integrity." Hindu American Foundation, Apr. 24, 2018, https://www.hinduamerican.org/press/truschke-twitter-academic-sensationalism-trumps-academic-integrity. In the article, HAF describes Truschke's academic work and advocacy as "juvenile and incendiary . . . unbefitting of any serious scholar." *Id.* In March 2021, HAF's executive director Suhag Shukla tweeted about Professor Truschke, including stating that Truschke is "endangering" the "wellbeing & safety" of Hindu students at Rutgers in Newark and asking Rutgers to censure Truschke. Suhag A. Shukla (@SuhagAShukla) Twitter (Mar. 11, 2021, 6:20 PM), https://twitter.com/SuhagAShukla/status/1370152620782989312. HAF board member Rajiv Pandit tweeted on March 20 to call Professor Truschke "a bigoted, Hinduphobic associate professor." Rajiiv Pandit (@rajiv_pandit) Twitter (Mar. 20, 2021, 8:59 PM), https://twitter.com/rajiv_pandit/status/1373439162939027458.

II. PROFESSOR TRUSCHKE TWEETS ABOUT ARTICLES CRITICAL OF HAF

On April 2, 2021, Al Jazeera Media Network's AlJazeera.com ("Al Jazeera") published an article by non-defendant journalist Raqib Hameed Naik titled: "Hindu right-wing groups in US got $833,000 of federal COVID fund[:] Five groups linked to Hindu nationalist organisations in India received direct payments and loans in federal relief fund" ("First Story"). Compl. ¶ 24. The article identifies HAF as one such group. *Id.* ¶ 22.

On April 2, 2021, in a series of tweets, Professor Truschke shared a link to the First Story, quotes from the First Story, and her own commentary. *See* Dr. Audrey Truschke (@AudreyTruschke) Twitter (Apr. 2, 2021, 7:10 AM – 7:19 AM), https://twitter.com/AudreyTruschke/status/1377941610768519173. This thread included the following tweet Plaintiff alleges to be defamatory ("Coordinated Effort Tweet"):

> To add a personal note -- Some of the groups mentioned here, 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.

Compl. ¶¶ 3, 26(b), 47.

On April 8, 2021, Al Jazeera published a related article titled: "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'" ("Second Story"). Compl. ¶ 28. The Second Story contained quotes from three other Defendants as well as statements from the Coalition to Stop Genocide in India. *Id.* ¶ 29. Professor Truschke tweeted a link to the Second Story, again adding her own commentary. *See* Dr. Audrey Truschke (@AudreyTruschke) Twitter (Apr. 8, 2021, 12:25 PM – 12:28 PM), https://twitter.com/AudreyTruschke/status/1380195101239042052. This thread included the following tweet Plaintiff alleges to be defamatory ("Diverse Backgrounds Tweet"):

> Indian Americans of diverse backgrounds call for probe of US-based Hindu nationalist groups.
>
> As a scholar of South Asia, I can attest that some of these groups spread hate & use intimidation tactics.
>
> These things are dangerous and unwelcome on US soil.

Compl. ¶ 31(a). In the same thread, Professor Truschke tweeted:

> Brief clarification for those new to this subject –
>
> Hindu nationalism, also known as Hindutva, is a narrow political ideology. It is distinct from the broad-based religious tradition of Hinduism.

> Conflating the two is incorrect and offensive. Many Hindus oppose Hindutva.

Dr. Audrey Truschke (@AudreyTruschke) Twitter (Apr. 8, 2021, 12:28 PM), https://twitter.com/AudreyTruschke/status/1380195903290638355.

On April 13, 2021, Professor Truschke posted a Twitter thread responding to a tweet by HAF board member Rajiv Pandit. Dr. Audrey Truschke (@AudreyTruschke) Twitter (Apr. 13, 2021, 1:09 PM – 1:13 PM), https://twitter.com/AudreyTruschke/status/1382018066008174593.

For context, the full thread is reproduced below:

Dr. Audrey Truschke
@AudreyTruschke

Here we have a board member of the Hindu American Foundation -- known to promote Hindutva ideology in the US -- employing aa anti-Semitic trope to attack the authors of a recent opinion piece on human rights abuses in India.

Links in the #THREAD

Rajiv Pandit
@rajiv_pandit

Hi @KnoxThames, when writing a piece slamming India, isn't it important to mention in the disclaimer that you used to work for anti-India @USCIRF? At least @sikhprof discloses he's funded by Soros Open Societies ($100K) that has an openly anti-Modi agenda?

Knox Thames @KnoxThames · 5h
Co-wrote new @cnn article with @simran about the worsening rights environment in India. We make the case for why human rights must matter in US-India relations and in countering China. Losing India, seeing it slide away from share values, would remake the region in China's image. twitter.com/cnnopinion/sta...

12:33 PM · Apr 13, 2021 · Twitter Web App

1:09 PM · Apr 13, 2021 · Twitter Web App

73 Retweets 12 Quote Tweets 214 Likes

Dr. Audrey Truschke @AudreyTruschke · Apr 13
Replying to @AudreyTruschke
On the anti-Semitism of attacks on Soros and his philanthropic work:

The Antisemitism Lurking Behind George Soros Conspiracy Theories
George Soros conspiracy theories include well-worn antisemitic tropes, such as Jewish control of the media or banks, undermining societies ...
adl.org

2 10 40

Dr. Audrey Truschke @AudreyTruschke · Apr 13
On Hindu nationalists' use of anti-Semitic ideas, language, and tropes:

Anti-Semitism of Hindu Nationalists
Two years ago, I awoke to the following tweet: "I hope another Hitler comes back and finishes off your people," accompanied by a picture ...
indiaabroad.com

3 18 63

Dr. Audrey Truschke @AudreyTruschke · Apr 13
On the Hindu American Foundation's Hindutva agenda and its long-standing opposition to human rights concerns:
coalitionagainstgenocide.org/press/cag.pr.0...

4 18 70

Dr. Audrey Truschke @AudreyTruschke · Apr 13
Two further notes --

This is an especially odious attack on #Vaisakhi.

Full disclosure that the HAF Board member in question has been going after me, along with a growing list of people, in recent days.

5 15 55

Plaintiff alleges that the following statements from this thread were defamatory ("HAF Board Tweets"):

> Here we have a board member [Rajiv Pandit] of the Hindu American Foundation -- known to promote Hindutva ideology in the US -- employing aa anti-Semitic trope to attack the authors of a recent opinion piece on human rights abuses in India…
>
> On the Hindu American Foundation's Hindutva agenda and its long-standing opposition to human rights concerns: http://www.coalitionagainstgenocide.org /press/cag.pr.07apr2014.php[.]
>
> …Full disclosure that the HAF Board member in question [Rajiv Pandit] has been going after me, along with a growing list of people, in recent days[.]

Compl. ¶ 33.

III. HAF FILES SUIT

On May 7, 2021, HAF filed a diversity action in this Court against Professor Truschke and four other defendants: Sunita Viswanath, Raju Rajagopal, Rasheed Ahmad, and John Prabhudoss ("Non-Truschke Defendants"; together with Professor Truschke, "Defendants"). Dkt. 1 ("Compl."). In its complaint, HAF asserts one cause of action against the Non-Truschke Defendants for defamation, one cause of action against Professor Truschke for defamation, and a third claim against all Defendants for civil conspiracy. Compl. ¶¶ 41-54.

The complaint asserts personal jurisdiction over the Defendants by generically claiming that they "have minimum contacts with Washington, District of Columbia." *Id.* ¶ 17. The complaint identifies those minimum contacts as "purposeful conduct in making and conspiring to publish defamatory statements intended to injure an organization located in the District of Columbia." *Id.* The complaint makes no reference to the District's long-arm statute in its assertion of personal jurisdiction.

The complaint alleges that the allegedly defamatory statements were motivated by "dislike [of] the political party currently in power in India (which is often labeled a 'Hindu nationalist' party)." *Id.* ¶ 4. The complaint also asserts the purely legal conclusion (with no factual allegations to support it) that Professor Truschke published the alleged defamatory statements with actual malice. *Id.* ¶ 48. HAF alleges that Defendants' allegedly defamatory statements were "defamatory *per se*" and "highly damaging to HAF." *Id.* ¶ 36. Plaintiff requests relief in the form of compensatory damages in an amount exceeding $75,000, punitive damages, injunctive relief prohibiting the publication or further dissemination of the allegedly defamatory statements, and costs of suit. *Id.* ¶ 54.

ARGUMENT

This Court should dismiss HAF's complaint against Professor Truschke for two independent reasons. The first is a lack of personal jurisdiction: under the District of Columbia's long-arm statute, this Court does not have jurisdiction over Professor Truschke for this defamation cause of action, which caused alleged injury in the District, unless Plaintiff can show that Professor Truschke engaged in the "persistent course of conduct" in this District – the "plus factor" connecting the defendant with the form more generally – required by the long arm statute. No such "plus factor" exists, and HAF does not attempt to plead the existence of such contacts in its complaint. In addition, HAF has failed to state a plausible claim against Professor Truschke. The complaint fails to allege facts that plausibly show Professor Truschke's tweets were made with actual malice—a threshold requirement where, as here, the plaintiff is a public figure.

I. THIS COURT LACKS PERSONAL JURISDICTION OVER PROFESSOR TRUSCHKE

The two causes of action against Professor Truschke concern conduct which took place entirely outside the District, causing alleged injury to an organization residing within the District. Professor Truschke has had *de minimis* connections with the District over the last ten years—connections that do not rise to anywhere near the level required by the long-arm statute or constitutional due process. Therefore, the claims against Professor Truschke should be dismissed for lack of personal jurisdiction.

To survive a Rule 12(b)(2) motion to dismiss, HAF must make a prima facie showing of the factual basis for this Court to assert personal jurisdiction over Professor Truschke. *See Mwani v. bin Laden*, 417 F.3d 1, 7 (D.C. Cir. 2005); *Edmond v. U.S. Postal Serv. Gen. Counsel*, 949 F.2d 415, 424 (D.C. Cir. 1991). To make this showing, HAF must allege "specific acts connecting [the] defendant with the forum," *First Chi. Int'l v. United Exch. Co.*, 836 F.2d 1375, 1378 (D.C. Cir. 1988) (citation omitted) (alteration in original), and cannot simply rely on bare allegations and conclusory statements, *Second Amendment Found. v. U.S. Conf. of Mayors*, 274 F.3d 521, 524 (D.C. Cir. 2001).

In the District of Columbia, a two-part framework governs personal jurisdiction over a non-resident defendant. To establish personal jurisdiction over a defendant, the plaintiff "must plead facts that (1) bring the case within the scope of the District of Columbia's long-arm statute, . . . and (2) satisfy the constitutional requirement of due process." *Kopff v. Battaglia*, 425 F. Supp. 2d 76, 81 (D.D.C. 2006) (citation omitted). HAF fails to meet either prong of this standard.

A. HAF Fails to Make a Prima Facie Showing that Professor Truschke Is Within the Reach of the District of Columbia's Long-Arm Statute

1. Subsection (a)(4) of the Long-Arm Statute Applies Because Plaintiff Alleges Injury From an Act Outside the District

The District of Columbia's long-arm statute, D.C. Code § 13-423 ("Section 13-423" or "Long-Arm Statute"), guides the first part of the personal jurisdiction analysis. Section 13-423 grants District of Columbia courts jurisdiction over a person who acts "causing tortious injury in the District of Columbia by an act or omission in the District of Columbia," D.C. Code § 13-423(a)(3), or "causing tortious injury in the District of Columbia by an act or omission outside the District of Columbia 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 of Columbia." D.C. Code § 13-423(a)(4). The statute makes a "careful distinction" between the injury and the act: while an act *in* the District of Columbia gives rise to personal jurisdiction on its own, an act taken *outside* the District of Columbia that causes an injury *within* the District is not similarly immediately within the court's jurisdiction. *See McFarlane v. Esquire Magazine*, 74 F.3d 1296, 1300 (D.C. Cir. 1996) (explaining distinction between subsections (a)(3) and (a)(4) of the Long-Arm Statute and affirming lower court's finding that personal jurisdiction did not exist over defendant under either subsection).

Here, it is uncontested that subsection (a)(4) of the is the only provision of the Long-Arm Statute that could possibly apply. HAF makes no claim that Professor Truschke's social media posts constitute conduct which occurred within the District of Columbia, only that HAF's alleged injury occurred there. *See* Compl. ¶ 17.[4] Thus, in order for this court to have personal

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[4] Section 13-423(a)(3) – which applies when the injury is caused by an alleged "act or omission in the District of Columbia" – is plainly inapplicable here. The mere fact that the statements were accessible to Twitter users in the District is not sufficient: the D.C. Circuit has

jurisdiction over Professor Truschke, HAF has the burden of pleading not only an alleged injury within the District, but also facts sufficient to show that Professor Truschke "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 of Columbia." D.C. Code § 13-423(a)(4). HAF cannot meet this burden.

2. Professor Truschke's Scant Contacts with the District Do Not Satisfy the "Plus Factor" the Long-Arm Statute Requires

Subsection (a)(4) of the Long-Arm Statute requires more than the bare constitutional minimum for personal jurisdiction. That is, "the District government has made a deliberate decision not to allow access to D.C. courts to every person who is injured here and otherwise could bring a claim for civil redress." *Kopff*, 425 F. Supp. 2d at 82. In other words, "(a)(4) subsection [does] not occupy all of the constitutionally available space." *Crane v. Carr*, 814 F.2d 758, 762 (D.C. Cir. 1987). As such, the Long-Arm Statute requires the existence of a "plus factor" that establishes "some other reasonable connection between the state and the defendant" beyond the alleged injury. *Id.* The "plus factor" requirement demands that, in addition to the plaintiff's alleged injury occurring inside the District, the defendant must be "engage[d] in some persistent course of conduct or derive[] substantial revenue from the District." *Moncrief v. Lexington Herald-Leader Co.*, 807 F.2d 217, 221 (D.C. Cir. 1986) (citing D.C. Code § 13-423(a)(4)). That conduct must be "separate from and in addition to the in-state injury." *Crane*, 814 F.2d at 762. This approach is intended to "filter out cases in which the inforum

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repeatedly "held that publishing defamatory or otherwise tortious statements within the District that were made outside the District falls short of what subsection (a)(3) requires." *Forras v. Rauf*, 812 F.3d 1102, 1107 (D.C. Cir. 2016) (citations omitted).

impact is an isolated event and the defendant otherwise has no, or scant, affiliations with the forum." *Id.* at 763 (citations omitted).

To satisfy the 'plus factor' requirement, the defendant must meet one of the following criteria: (1) "regularly do[ing] or solicit[ing] business," (2) "engag[ing] in any other persistent course of conduct," or (3) "deriv[ing] substantial revenue from goods used or consumed, or services rendered, in the District of Columbia." D.C. Code § 13-423(a)(4). The statutory language requires that such conduct *must* be "regular," "persistent," or resulting in "substantial revenue"—anything lacking that extensivity cannot grant cannot grant jurisdiction to the D.C. courts. *See Betz v. Aidnest*, No. 1:18-cv-0292, 2018 WL 5307375, at *7 (D.D.C. Oct. 26, 2018) ("even if the 'five plus' phone calls themselves were evidence of business solicitation or otherwise qualifying course of conduct in the District, section (a)(4) requires that any such acts occur 'regularly' or be 'persistent'" in the District); *Burman v. Phoenix Worldwide Indus., Inc.*, 437 F. Supp. 2d 142, 154–56 (D.D.C. 2006) (finding defendant's periodic work for seven District-based clients did not constitute "regularly doing business" for purposes of (a)(4)).[5]

Communications with District residents are also inadequate to satisfy the (a)(4) requirements for personal jurisdiction. *See, e.g.*, *Tavoulreas v. Comnas*, 720 F.2d 192, 194 (D.C.

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[5] Similarly, occasional travel to the District is not enough to establish jurisdiction under subsection (a)(4). *See, e.g.*, *Bauman v. Butowsky*, 377 F. Supp. 3d 1, 6–10 (D.D.C. 2019) (finding two trips to D.C., maintenance of social media accounts which at times targeted political figures in D.C., contributing to D.C.-based organizations, and speaking at conference in Maryland hosted by D.C.-based organization "clearly not enough" to establish personal jurisdiction under subsection (a)(4)); *Urban Inst. v. FINCON Servs.*, 681 F. Supp. 2d 41, 47–48 (D.D.C. 2010) (finding that "three trips for meetings at which no business was successfully conducted do not rise to the requisite level" under (a)(4)); *Dean v. Walker*, 756 F. Supp. 2d 100, 103–04 (D.D.C. 2010) (finding tourist trip and attendance at two conferences "simply insufficient to establish a 'regular' or 'persistent' course of conduct in the District of Columbia as required by § 13–423(a)(4)"); *Burman*, 437 F. Supp. 2d at 153–54 (finding defendant's employees "attending continuing education programs, conferences and seminars" insufficient as plus factor).

Cir. 1983) (holding that "frequent" phone calls from outside the District to the District do not constitute a "persistent course of conduct *in the District*") (emphasis in original); *Burman*, 437 F. Supp. 2d at 154 (finding defendant's approximately 1,326 phone calls to the District insufficient for plus factor).

Here, Professor Truschke's contacts with the District of Columbia over the past ten years are nowhere close to satisfying the "plus factor" required by the Long-Arm Statute. Truschke's limited connections to the District over the past ten years include brief and infrequent trips to D.C., participation in two events hosted by a D.C.-based organization (that took place outside of the District), recognition for a book award at a conference which took place in the District (but which Truschke did not attend), and email correspondence with the D.C.-based Freer Sackler Gallery. Truschke Decl. ¶ 15. None of these activities — not individually, nor as a "patchwork of purported D.C. conduct" — satisfy the plus factor requirement. *Bauman*, 377 F. Supp. 3d at 7.

Cases in which D.C. courts have found that the (a)(4) plus factor *was* satisfied stand in stark contrast to Professor Truschke's sparse contacts with the District. For example, in *Blumenthal v. Drudge*, 992 F. Supp. 44, 54–57 (D.D.C. 1998), a court found that the plus factor was satisfied where the defendant operated an interactive website primarily concerning "political gossip and rumor in Washington, D.C.," solicited monetary and content contributions for the website from D.C. residents via an email listserv, and visited the District to appear on C-SPAN to promote his reporting on D.C. politics. In *Levy v. Southern Poverty Law Center*, 723 F. Supp. 2d 116, 126–28 (D.D.C. 2010), a court found that a similar combination of a defendant soliciting and receiving contributions from D.C. residents, maintaining an interactive website available to D.C. residents, distributing its magazines to D.C. residents via mail, gathering information from

residents for its website and publications, and monitoring hate groups in D.C. justified personal jurisdiction under (a)(4).

Unlike in cases such as *Drudge* and *Levy*, where the court did find personal jurisdiction, Professor Truschke neither solicited contributions from D.C. residents, nor maintained an email list or interactive website where she solicited content contributions from D.C. residents.

In short, nothing in Professor Truschke's limited contacts with the District of Columbia over the past ten years is indicative of the "persistent course of conduct" that the Long-Arm Statute requires. The statute's narrowing of the full extent of jurisdiction allowed by the Constitution was specifically designed to avoid this sort of suit, where the "inforum impact is an isolated event" and the defendant's other affiliations with the forum are "scant." *Crane*, 814 F.2d at 763.

B. Exercise of Personal Jurisdiction Over Professor Truschke Would Violate Due Process

Subsection (a)(4) of the D.C. Long-Arm Statute is more restrictive than the Constitution's Due Process Clause. *See Crane*, 814 F.2d at 762 ("(a)(4) subsection [does] not occupy all of the constitutionally available space."). Because HAF cannot meet the requirements of the Long-Arm Statute, it is thus unnecessary for this Court to reach the due process question at all. *See Bauman*, 377 F. Supp. 3d at 6 (declining to reach constitutional portion of the personal jurisdiction analysis after finding that plaintiff had not satisfied the D.C. Long-Arm Statute). However, even setting aside the Long-Arm Statute, it is clear that exercising personal jurisdiction over Professor Truschke in this action would violate the Due Process clause.

"[T]he Fifth Amendment prohibits a defendant from being haled into court 'solely as a result of random, fortuitous, or attenuated contacts . . . or of the unilateral activity of another party or third person.'" *Kopff*, 425 F. Supp. 2d at 87 (quoting *Burger King Corp. v. Rudzewicz*,

471 U.S. 462, 475 (1985)). In other words, "the Due Process Clause requires that plaintiffs demonstrate a sufficiently close connection between their asserted injuries and the defendant's contacts with the forum so that 'maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" *Id.* at 82–83 (citation omitted). The mere fact that the *Plaintiff* is based in the District and allegedly suffered injury here is not sufficient. *See Walden v. Fiore*, 571 U.S. 277, 290 (2014) ("Regardless of where a plaintiff lives or works, an injury is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact with the forum State. The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way.").

Professor Truschke's contacts with the District cannot be described as anything other than "random," "fortuitous," and "attenuated." *Kopff*, 425 F. Supp. 2d at 87. And, as courts across the country have repeatedly held, merely posting a statement on social media that concerns a resident of a forum, without more, is not remotely sufficient to satisfy the requirements of due process. *See, e.g.*, *Vangheluwe v. Got News, LLC*, 365 F. Supp. 3d 850, 863–64 (E.D. Mich. 2019) (granting motion to dismiss as to two defendants where defendants' contacts with forum state were limited to tweets about forum state residents); *Blue Water Int'l, Inc. v. Hattrick's Irish Sports Pub, LLC*, No. 8:17-CV-1584-T-23AEP, 2017 WL 4182405, at *4 (M.D. Fla. Sept. 21, 2017) ("Subjecting the [defendant] to personal jurisdiction in Florida merely because a Floridian might view the [defendant's] Facebook, Twitter, Yelp, or TripAdvisor pages 'offend[s] traditional notions of fair play and substantial justice.'") (citation omitted); *Cross v. Rodgers*, No. 3:16-CV-01128, 2017 WL 3237623, at *5 (M.D. Tenn. July 31, 2017) (finding

Facebook posts insufficient to subject defendants to personal jurisdiction in defamation claim brought by resident of forum state).[6]

In sum, the complaint fails to make any allegation that Professor Truschke satisfies the D.C. Long-Arm Statute; it ignores entirely the two-prong analysis required for personal jurisdiction and exclusively asserts jurisdiction based on the minimum contacts standard required by constitutional due process. Compl. ¶ 17. That is not enough. Even looking beyond the failings of the complaint to Professor Truschke's sparse contacts with the District of Columbia for the past ten years, it is evident that this Court cannot exercise personal jurisdiction over her for the purposes of HAF's claim: neither the Long-Arm Statute or the Due Process Clause is satisfied.[7] Accordingly, this Court should dismiss all claims against Professor Truschke for lack of personal jurisdiction.[8]

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[6] Moreover, while Professor Truschke, like many academics, maintains an active Twitter account as part of her academic work, at least one court in this District has found that Twitter is a "passive website" which does not give rise to personal jurisdiction on its own. *See Sweetgreen, Inc. v. Sweet Leaf, Inc.*, 882 F. Supp. 2d 1, 3–5 (D.D.C. 2012). *See also Blessing v. Chandrasekhar*, 988 F.3d 889, 905 (6th Cir. 2021) (affirming dismissal of claims arising out of social media posts for lack of jurisdiction, noting that "plaintiffs d[id] not point to a single case in which a court extended personal jurisdiction based on a defendant's allegedly tortious postings on social media").

[7] Allowing any jurisdictional discovery in this action would be futile, as Professor Truschke has already provided a sworn declaration describing her minimal contacts with the District in detail, and the complaint does not offer any contradicting allegations. *See Dean*, 756 F. Supp. 2d at 104 (denying request for jurisdictional discovery where jurisdictional discovery would be futile in light of defendant's declaration describing his minimal contacts with the District).

[8] HAF also cannot establish personal jurisdiction under a "conspiracy" theory. A necessary prerequisite for establishing personal jurisdiction under this theory is that a plaintiff adequately plead a civil conspiracy claim. *See Second Amendment Found. v. U.S. Conference of Mayors*, 274 F.3d 521, 524 (D.C Cir. 2001) (affirming dismissal for lack of personal jurisdiction where plaintiff relied on conspiracy-based jurisdiction and failed to make prima facie showing of civil conspiracy claim); *Jungquist v. Sheikh Sultan Bin Khalifa Al Nahyan*, 115 F.3d 1020, 1031 (D.C. Cir. 1997) (explaining that "[b]ald speculation or a conclusionary statement that individuals are co-conspirators is insufficient to establish personal jurisdiction under a

II. THE CLAIMS AGAINST PROFESSOR TRUSCHKE MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM

Separate from this Court's lack of personal jurisdiction over Professor Truschke, Plaintiff's claims should also be dismissed under Fed. R. Civ. P. 12(b)(6) because Plaintiff has failed to state any claim against her. The complaint's allegations concerning Professor Truschke are focused primarily on tweets she posted about the two Al Jazeera articles at issue in this suit, with her additional commentary about the content of the articles and HAF. The defamation claim is doomed because it fails to plausibly state a claim of actual malice, as Plaintiff must do to survive dismissal. The conspiracy claim fails with the defamation claim and because it is facially implausible. In short, in addition to this Court's lack of personal jurisdiction over Professor Truschke, Plaintiff's claims should also be dismissed because. Plaintiff has failed to state any claim against her. The claims against Professor Truschke must be dismissed in full.

To survive a motion to dismiss for failure to state a claim under Rule 12(b)(6), HAF's "obligation to provide the grounds of [its] entitlement to relief requires more than labels and conclusions," and must allege facts that are "enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations and quotation marks omitted). A 12(b)(6) motion is intended to "intended to test the legal sufficiency of the complaint." *Kingman Park Civic Ass'n v. Williams*, 348 F.3d 1033, 1040 (D.C. Cir. 2003) (citation omitted). As this stage, a court "takes all of the facts asserted in the

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conspiracy theory") (citation and quotation marks omitted); *3M Co. v. Boulter*, 842 F. Supp. 2d 85, 112–13 (D.D.C. 2012) (granting motion to dismiss and rejecting conspiracy jurisdiction theory where plaintiff failed to plead conspiracy claim with adequate particularity). As detailed in section II.B below, HAF's conspiracy claim does not survive this hurdle: the conspiracy claim fails both because it cannot stand without the defamation claim, and because HAF fails to plausibly allege the existence of any agreement among defendants. HAF therefore cannot rely on a conspiracy theory of personal jurisdiction to hale Professor Truschke into court here.

complaint as true." *Postal Police Officers Ass'n v. U.S. Postal Serv.*, 502 F. Supp. 3d 411, 417 (D.D.C. 2020). The court is not, however, required to accept legal conclusions as true where those conclusions are not supported by underlying factual allegations. *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009).

A. HAF Fails to Make a Plausible Claim of Actual Malice

Plaintiff's defamation claim against Professor Truschke fails because HAF fails to plead facts sufficient to show actual malice. Where a plaintiff is a public figure—as HAF is—the First Amendment requires defamation claims to meet a heightened standard. In order to meet that heightened standard, a plaintiff must demonstrate that the defendant acted with actual malice—that is, "with knowledge that [the statement] was false or with reckless disregard of whether it was false or not." *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 52, 56 (1988) (quoting *Sullivan*, 376 U.S. at 279–80). Courts in this Circuit—and around the country—routinely dismiss libel claims where, as here, a plaintiff fails to plausibly plead that the statements at issue were published with actual malice. *See, e.g.*, *Tah*, 991 F.3d at 240–43 (rejecting what district court described as plaintiffs' "several interlocking theories to support the allegation of actual malice" and affirming district court's finding that these theories failed to support plausible claim that defendant acted with actual malice); *Arpaio v. Zucker*, 414 F. Supp. 3d 84, 91–92 (D.D.C. 2019); *Fairbanks*, 314 F. Supp. 3d at 92–93; *Deripaska*, 282 F. Supp. 3d at 143–44.[9]

HAF is a public figure and therefore must plead facts sufficient to show that Professor Truschke acted with actual malice. HAF fails to meet this requirement.

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[9] *See also Michel v. NYP Holdings, Inc.*, 816 F.3d 686, 701–02 (11th Cir. 2016); *Biro v. Condé Nast*, 807 F.3d 541, 544–46 (2d Cir. 2015); *Pippen v. NBCUniversal Media, LLC*, 734 F.3d 610, 614–15 (7th Cir. 2013); *Mayfield v. Nat'l Ass'n for Stock Car Auto Racing, Inc.*, 674 F.3d 369, 377–78 (4th Cir. 2012); *Schatz v. Republican State Leadership Comm.*, 669 F.3d 50, 58 (1st Cir. 2012).

1. Plaintiff Is a Public Figure

An individual or organization is deemed a public figure through one of two means: first, as a general purpose public figure, wherein "pervasive fame and notoriety" affords them public figure status "for all purposes and in all contexts," *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974), or, second, as a limited purpose public figure, meaning an individual or organization "attempting to have, or [who] realistically can be expected to have, a major impact on the resolution of a specific public dispute that has foreseeable and substantial ramifications for persons beyond its immediate participants." *Waldbaum v. Fairchild Publ'ns*, 627 F.2d 1287, 1292 (D.C. Cir. 1980); *see also Kahl v. Bureau of Nat'l Affairs, Inc.*, 856 F.3d 106, 114 (D.C. Cir. 2017).

As an organization dedicated to public advocacy and education on issues – including issues at the heart of this case – HAF is indisputably a public figure for purposes of this claim. *See, e.g.*, *Parsi v. Daioleslam*, 595 F. Supp. 2d 99, 104–06 (D.D.C. 2009) (finding National Iranian American Council and its president were limited public figures for purposes of libel suit concerning statements about plaintiffs' relationship with Iranian government, where organization's mission was to "advance[] the interests of the Iranian American Community on civic, cultural and political issues"). In fact, HAF's reason for existence is to influence public perception and debate: HAF describes itself as an organization which "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." Compl. ¶¶ 1, 19. Through its advocacy and education work, HAF "ha[s] chosen paths of endeavor that 'invite attention and comment'", and its conduct "ha[s] placed [it] squarely in the public light." *OAO Alfa Bank v. Ctr. for Pub. Integrity*, 387 F. Supp. 2d 20, 42–47 (D.D.C. 2005) (finding Russian businessmen to be limited public figures for purposes of "controversy involving

corruption in post-Soviet Russia and the future of Western aid and investment in the country"). HAF is plainly a public figure in the context of this particular controversy, as the content of the articles and Professor Truschke's tweets pertain directly to the organization's education and advocacy efforts that "voluntarily inject[]" it into the public eye. *Gertz*, 418 U.S. at 351. HAF's actions mean that it "voluntarily runs the risk of closer public scrutiny" and therefore must satisfy the heightened First Amendment requirements that apply to public figures. *Id.* at 344.

With respect to the subjects of the articles and tweets at issue here, HAF plainly operates as a limited-purpose public figure. HAF therefore must satisfy the actual malice standard, which it does not—and cannot—do.

2. Plaintiff's Failure to Plead Actual Malice Mandates Dismissal of Its Defamation Claim

Because HAF is a public figure for the purposes of this claim, it must properly plead actual malice. *See Hustler Magazine*, 485 U.S. at 56. Such allegations must be more than legal conclusions or a recitation of the elements; as with any other allegations in a complaint, the plaintiff must plead specific facts that make the element of actual malice plausible on its face. *See Twombly*, 550 U.S. at 555; *Iqbal*, 556 U.S. at 678. Where a plaintiff fails to plausibly allege that a defendant acted with actual malice, a defamation claim must be dismissed. *See Tah*, 991 F.3d at 240–43.

To surmount the "famously daunting" actual malice standard at the pleading stage, HAF must allege facts that plausibly show that Professor Truschke made a defamatory statement "with knowledge that it was false or with reckless disregard of whether it was false or not." *Tah*, 991 F.3d at 240 (citations and internal quotation marks omitted). This standard requires far more than mere journalistic negligence, personal animus, or ill motive. "[P]reconceived notions or suspicions usually do little to show actual malice." *Id.* at 241 (quoting *Jankovic Int'l Crisis Grp.*,

822 F.3d 576, 597 (D. C. Cir. 2016) (internal quotation marks omitted)). "[E]ven an 'extreme departure from professional standards' is insufficient to prove actual malice on its own." *Id.* at 242 (quoting *Harte-Hanks Commc'ns v. Connaughton*, 491 U.S. 657, 665 (1989)). As this Court recently put it: "Plaintiff must plead facts that would render it plausible that [Professor Truschke] 'in fact entertained serious doubts as to the truth of [the statements'] publication.'" *Nunes v. WP Co. LLC*, 513 F. Supp. 3d 1, 7 (D.D.C. 2020) (quoting *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968)); *see also Jankovic*, 822 F.3d at 589 ("[I]t is not enough to show that defendant should have known better; instead, the plaintiff must offer evidence that the defendant in fact harbored subjective doubt."). Plaintiff does not—and cannot—meet this pleading standard.

a. HAF Cannot Plead Actual Malice Through Reciting a Threadbare Legal Conclusion

The complaint seeks to allege actual malice through mere legal conclusion. Compl. ¶ 48. This bare recitation ("Defendant Truschke made and/or republished such statements with actual malice") falls far short of an adequate pleading of this element. *See Arpaio*, 414 F. Supp. 3d at 91 (finding allegation that "[d]efendants acted with actual malice insofar as they knew that the statements made against Plaintiff Arpaio were false and/or recklessly disregarded their falsity" insufficient to plead actual malice); *Hourani v. Psybersolutions LLC*, 164 F. Supp. 3d 128, 144 (D.D.C. 2016) (finding allegation that "questions, innuendos and statements in [d]efendants' [c]ampaign were published by [d]efendants with reckless disregard of their truth or falsity or with malice" insufficient to plead actual malice), *aff'd*, 690 F. App'x 1 (D.C. Cir. 2017) (finding allegation that "questions, innuendos and statements in [d]efendants' [c]ampaign were published by [d]efendants with reckless disregard of their truth or falsity or with malice" insufficient to plead actual malice). That in itself requires dismissal.

b. HAF Fails to Allege Any Facts to Plausibly Establish That Professor Truschke Harbored Subjective Doubts About Her Tweets

Plaintiff makes no effort to allege facts that could plausibly establish that Professor Truschke harbored any subjective doubts about the truth of her tweets. This failure further underscores the futility of Plaintiff's defamation claim. Not only has HAF failed to allege such facts at the outset, HAF cannot plausibly allege such facts. Against the backdrop of the ongoing vitriolic political debate over Hindutva ideology in the United States—and the context of the parties' expertise and involvement in that debate both on- and off-line—it becomes implausible to allege that Professor Truschke tweeted with knowledge of falsity or reckless disregard as to whether her statements were true. *See Jankovic*, 822 F.3d at 591 (citing report author's PhD in relevant subject matter, devotion of his professional life to study of report subject matter, and extensive research on report subject matter as evidence of nonprofit organization's good faith belief that defamatory statement in report was true). This context makes the complaint's absence of specific allegations of actual malice all the more damning. In other words, Plaintiff has not—and cannot—show that Professor Truschke harbored any subjective doubt about the truth of her statements on this subject.[10]

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[10] Even if this Court had personal jurisdiction over Professor Truschke and HAF had adequately pleaded actual malice, the defamation claim against Professor Truschke still fails in light of the context and content of Professor Truschke's tweets. The tweets at issue reflect off-the-cuff commentary on an informal social networking platform in the midst of contentious political debate. Not only are unverifiable statements of opinion generally nonactionable, the setting or context of allegedly defamatory speech "helps determine the way in which the intended audience will receive [the speech]." *Moldea v. N.Y. Times Co.*, 22 F.3d 310, 314–15 (D.C. Cir. 1994) (noting that, in the context of a book review, "the allegedly libelous statements were evaluations quintessentially of a type readers expect to find in that genre"); *see also Bauman*, 377 F. Supp. 3d at 12 (finding to be subjective and unverifiable defendant's statements that plaintiff's "job is just to discredit and try to go after people" and that plaintiff "will say anything"); *Wood v. Am. Fed'n of Gov't Emps.*, 316 F. Supp. 3d 475, 488 (D.D.C. 2018) (finding defendant's characterization of plaintiff as "gang member" and "crook" to be non-actionable

c. Professor Truschke's Reliance on Reputable Sources Negates a Finding of Actual Malice

In two of the tweets at issue—the Coordinated Effort Tweet and the Diverse Backgrounds Tweet—Truschke included a link to the First and Second Stories. To the extent that Plaintiff alleges that Professor Truschke's republication of the Stories itself amounts to defamation, *see* Compl. ¶¶ 26-27, 31, Plaintiff cannot show that Professor Truschke reposted the Stories with actual malice. Professor Truschke's reliance on a reputable news source, Al Jazeera, in reposting the Stories, negates a finding of actual malice.

A "good faith reliance on previously published reports in reputable sources . . . precludes a finding of actual malice as a matter of law." *Liberty Lobby, Inc., v. Dow Jones & Co.*, 838 F.2d 1287, 1297 (D.C. Cir. 1988); *see also McFarlane*, 74 F.3d at 1305 ("Reliance on a reporter's reputation can indeed show a lack of actual malice by a publisher."); *Montgomery v. Risen*, 197 F. Supp. 3d 219, 260 (D.D.C. 2016) ("Generally, a defendant's 'good faith reliance on previously published reports in reputable sources . . . precludes a finding of actual malice as a matter of law.'") (quoting *Liberty Lobby*, 838 F.2d at 1297), *aff'd*, 875 F.3d 709 (D.C. Cir. 2017). Particularly in light of her own expertise and experience, Professor Truschke had no reason to doubt the reliability of Al Jazeera's Stories, as Al Jazeera is an established and reputable global news source. *See Berisha v. Lawson*, 973 F.3d 1304, 1313 (11th Cir. 2020) (finding defendant's reliance on "many independent sources" including Al Jazeera investigative report "should defeat any claim of actual malice"). Even if Truschke had any "reason to be wary" of Al Jazeera's reports, her reliance on those reports was still justified where she "also had

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rhetorical hyperbole given context of group email to union members and staff), *aff'd*, No. 18-7124, 2019 WL 668337 (D.C. Cir. Feb. 12, 2019).

some reason to believe the story, based upon [her] own research." *McFarlane v. Sheridan Square Press, Inc.*, 91 F.3d 1501, 1513 (D.C. Cir. 1996).

Here, HAF has made *no* factual allegations supporting a finding of actual malice regarding Professor Truschke, meaning it has not met its burden at the pleading stage. Further underscoring her lack of actual malice, however, is Professor Truschke's reliance on a reputable news source as part of the tweets at issue and her own academic expertise and experience.

d. Assertions of Ideological Differences or Personal Animus as Motivation for Publication Do Not Establish Actual Malice

HAF argues that Defendants "dislike the political party currently in power in India (which is often labelled a 'Hindu nationalist party')" and made the allegedly defamatory statements because of that motive. Compl. ¶ 4. This vague assertion does not give rise to a plausible claim of actual malice.

"[F]reedom of expression upon public questions is secured by the First Amendment." *Sullivan*, 376 U.S. at 269. The First Amendment promises the "opportunity for free political discussion" and guards the "prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions." *Id.* (citations omitted). It extends this privilege to "vigorous advocacy" such as personal insults no less than to "abstract discussion." *Id.* (citations omitted). "Political speech is at the very core of the First Amendment." *Carey*, 791 F. Supp. 2d at 133. Courts are required to "err on the side of protecting political speech rather than suppressing it." *Fed. Election Comm'n v. Wisconsin Right to Life*, 551 U.S. 449, 457 (2007).

In the actual malice context specifically, "the motivations behind defendants' communications—inspired by political differences or otherwise—do not impact whether defendants acted with actual malice as a matter of law." *Arpaio*, 414 F. Supp. 3d at 92 (citation

omitted). Alleged or demonstrated bias due to "ideological sympathies" or "ideological opposition" does not suffice to show actual malice, for such an approach would mean that "valuable investigative journalism would be threatened by defamation laws." *Parsi*, 890 F. Supp. 2d at 90–91 (rejecting argument that defendant's ideological sympathies against Iranian government provided basis for showing actual malice in statements characterizing Iranian-American interest group and its president as agents of Iranian government); *see also Tah*, 991 F.3d 231 at 241 (rejecting allegation of defendant's "preconceived story line" as supporting allegation of actual malice, noting that, "[a]fter all, virtually any work of investigative journalism begins with some measure of suspicion"); *Jankovic*, 822 F.3d at 597 (affirming grant of summary judgment to defendant, rejecting as insufficient to establish actual malice argument that defendant "had concocted a pre-conceived storyline by which all wealthy Serbian citizens were Milosevic cronies"). Even if Defendants' statements were motivated by differences in ideology or personal vendettas, "caselaw resoundingly rejects the proposition that a motive to disparage someone is evidence of actual malice." *Parsi*, 890 F. Supp. 2d at 90 (citations omitted).

Here, any factual allegations plausibly supporting a finding that Professor Truschke acted with actual malice are notably absent. Even accepting for purposes of this motion HAF's allegation that the tweets at issue contain verifiably false statements of fact (which they do not), HAF does not plead any facts that suggest Truschke had knowledge that the statements in her allegedly defamatory tweets were untrue or that she had any obvious reasons to doubt her subjective belief that the content of her tweets were, in fact, true. While HAF's complaint contains a conclusory denial of the truth of Truschke's statements, "denials are so commonplace in the world of polemical charge and countercharge that, in themselves, they hardly alert the conscientious reporter to the likelihood of error." *Lohrenz v. Donnelly*, 350 F.3d 1272, 1285

(D.C. Cir. 2003). In any event, HAF does not allege that Truschke was alerted to the falsity of her allegedly defamatory statements *before* she posted the tweets at issue.

Defamation claims by public figures demand proof of actual malice to give "freedoms of expression . . . the 'breathing space' that they 'need . . . to survive.'" *Sullivan*, 376 U.S. at 271–272 (quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963)). This approach reflects our country's "profound national commitment to the free exchange of ideas, as enshrined in the First Amendment," *Harte-Hanks*, 491 U.S. at 685–86, and addresses the concern that "neither the defense of truth nor the standard of ordinary care would protect against self-censorship and thus adequately implement First Amendment policies." *St. Amant v. Thompson*, 390 U.S. 727, 731–32 (1968). The actual malice standard exists in part to protect the academic freedom of scholars like Professor Truschke. HAF does not meet this high standard. This Court need not "pry open the gates of discovery" over mere legal conclusions and allegations that "communications were motivated by differences in political opinions." *Arpaio*, 414 F. Supp. 3d at 92. Rather, the Court should grant Professor Truschke's motion to dismiss pursuant to Rule 12(b)(6).

B. The Conspiracy Claim Falls with the Defamation Claim and Because HAF Fails to Plausibly Allege the Existence of Any Agreement Among Defendants

A civil conspiracy charge must be supported by underlying tortious behavior giving rise to a cause of action. If the claim for that underlying tort fails, a conspiracy charge will therefore fail as well. *Nunes*, 513 F. Supp. 3d at 9 (citations omitted). Thus, because HAF fails to state a claim for defamation, its civil conspiracy charge should be dismissed as well.

Even if the underlying defamation claim did not fail, Plaintiff independently fails to state a claim for civil conspiracy. To state a claim for civil conspiracy, the complaint must plausibly allege: "(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." *Mattiaccio v. DHA Grp., Inc.*, 20 F. Supp. 3d 220, 230 (D.D.C. 2014) (citation omitted). The existence of an agreement is the "essential element of a conspiracy claim." *Id.* (citation omitted). "In pleading that a defendant entered into an agreement the 'plaintiff must set forth more than just conclusory allegations of [the] agreement to sustain a claim of conspiracy against a motion to dismiss.'" *Id.* (quoting *Brady v. Livingood*, 360 F. Supp. 2d 94, 104 (D.D.C. 2004)) (alteration in *Mattiaccio*).

HAF's complaint is entirely devoid of facts plausibly alleging the existence of any agreement among Defendants. This is particularly true with respect to Professor Truschke. Aside from wholly conclusory labels, *see* Compl. ¶¶ 4, 52, HAF's allegations about the existence of a conspiracy among Defendants appear to boil down to the following allegations:

- Defendants "decided to target HAF with a campaign of lies and false statements." Compl. ¶ 4.
- Defendants "use each other as corroborating sources." *Id.*
- Defendants participated in a "strategic and coordinated effort to amplify the First Story" through republishing it online. *Id.* ¶ 27.
- "In furtherance of Defendants' conspiracy," they "caused additional false and defamatory statements to be published in the 'Second Story.'" *Id.* ¶ 28.
- "Defendant Ahmed arranged for Mr. Hameed Naik to appear at IAMC's virtual strategic meeting of its Executive Team." *Id.* ¶ 32.

As to the existence of a conspiracy among Defendants, these allegations are "purely conclusory and devoid of any factual support." *Acosta Orellana v. CropLife Int'l*, 711 F. Supp. 2d 81, 113 (D.D.C. 2010) (finding plaintiff failed to sufficiently plead civil conspiracy where

plaintiff made conclusory allegations that defendants "acted in concert to promote heavy usage of [a fungicide]," and "conspire[ed] to provide false and misleading information … regarding the dangers of the chemical."). Plaintiff provides no description of the alleged agreement among Defendants, including anything plausibly alleging the formation or existence of such an agreement. The only one of the above allegations which appears relevant to Professor Truschke is the allegation about republishing the First and Second Stories. But to suggest that a retweet amounts to a conspiratorial agreement is nonsensical. Plaintiff has failed to state a claim for conspiracy. Its suit against Professor Truschke should be dismissed in full.

CONCLUSION

For the foregoing reasons, this Court should reject Plaintiff's attempt to weaponize the judicial system to silence its critics and dismiss the claims against Professor Truschke in their entirety. HAF's claims do not have any merit, but even if they did, it has brought this action in the wrong forum. Professor Truschke is a resident of New Jersey who lacks the minimum contacts with this District necessary to establish personal jurisdiction under either the Long-Arm Statute or the due process clause of the Constitution.

Dated: August 27, 2021

Respectfully submitted,

/s/Eric J. Feder
Eric J. Feder (D.C. Bar No. 996955)

Davis Wright Tremaine LLP
1301 K Street NW
Suite 500 East
Washington, D.C. 20005-3317
(202) 973-4200
(202) 973-4499 (fax)
ericfeder@dwt.com

Jared Carter (admitted *pro hac vice*)
Christina Neitzey
(*pro hac vice* application forthcoming)
Cornell Law School First Amendment Clinic
Cornell University
Myron Taylor Hall
Ithaca, NY 14853-4901
(207) 319-6050
jc2537@cornell.edu
cn266@cornell.edu

Attorneys for Defendant Audrey Truschke