IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROY COCKRUM, SCOTT COMER, and ERIC SCHOENBERG, Plaintiffs, v. DONALD J. TRUMP FOR PRESIDENT, INC., and ROGER STONE, Defendants.	)	Civil Action No. 1:17-cv-1370-ESH

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS

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INTRODUCTION[1]

On July 22, 2016, Plaintiffs' lives were turned upside down. Their private information—information of no interest to the public such as social security numbers, financial information, sexual orientation, and private correspondence—was dumped online for the world to see forever, causing immediate and permanent injury. Shortly thereafter, two Plaintiffs had their identities stolen and attempts made to obtain credit in their names, actions that required them to take costly and time-consuming countermeasures. One Plaintiff was harassed and threatened with violence. All suffered significant emotional distress. Plaintiffs will have to live the rest of their lives with their private information available online, required to bear the cost of precautions and counter-measures against further injuries for which the violations of their privacy puts them at risk. All of Plaintiffs' injuries occurred due to their support for a candidate in a federal election. Plaintiffs seek redress for their injuries and, in so doing, hope to deter future similar behavior.

It is the unanimous view of the U.S. Intelligence Community ("IC") that Russia took measures to interfere in the 2016 U.S. elections on behalf of then-candidate Donald J. Trump. The Executive Branch, via Special Counsel Robert Mueller, is investigating "any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump," and is responsible for prosecuting any crimes discovered by that investigation. *See* Office of the Deputy Attorney General, Order No. 3915-2017, Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election & Relat-

[1] Throughout this brief, "Compl." and "Complaint" refer to the First Amended Complaint (ECF No. 17); "Campaign Br." refers to Defendant Donald J. Trump for President, Inc.'s Motion to Dismiss the First Amended Complaint (ECF No. 20); "Stone Br." refers to Defendant Roger Stone's Motion to Dismiss Amended Complaint (ECF No. 22); emphases in case quotations were added unless otherwise noted; and internal quotation marks, alterations, and citations were omitted from case quotations.

ed Matters (May 17, 2017), https://www.justice.gov/opa/press-release/file/967231/download.[2] The Legislative Branch is investigating Russian interference in the 2016 election and is responsible for reporting to the American people on its findings and developing policies to prevent such interference in the future. These are the proper roles for the Executive and Legislative Branches in response to Russia's interference. But our government is made up of three branches, and the Judiciary has a role to play as well: providing a forum for redress for individuals whose rights have been violated. That is a role neither of the other branches can adequately play. For this reason, Plaintiffs have come to this Court for relief.

The facts alleged in the Complaint already show—and Plaintiffs will be able to prove—that the injuries they suffered were the direct result of a conspiracy between Defendants and others, including Russian agents. In the shortest form, Plaintiffs allege that: (1) Russian agents hacked into DNC servers and stole Plaintiffs' private information; (2) Russian agents used long-standing connections with the Defendants to see if Defendants would collaborate in weaponizing the stolen material; (3) Defendants were indeed willing to cooperate, and entered into an agreement with Russian agents that involved a mutual exchange of benefits; and (4) part of that conspiracy involved giving stolen material that contained Plaintiffs' private information to WikiLeaks in order to have it disseminated in a strategic way designed to help the Trump Campaign.

[2] The Special Counsel has already obtained guilty pleas from Campaign advisors George Papadopolous and Michael Flynn, for lying to federal investigators about interactions with Russian agents, *see* Statement of the Offense, *United States v. Papadopoulos*, No. 1:17-cr-182-RDM, ECF No. 19 (D.D.C. Oct. 5, 2017) ("Papadopoulos SOO"); Statement of the Offense, *United States v. Flynn*, No. 1:17-cr-232-RC, ECF No. 4 (D.D.C. Dec. 1, 2017) ("Flynn SOO"), and has indicted Campaign Chairman Paul Manafort and Deputy Chairman Rick Gates for crimes related to their long-standing interactions with a pro-Russian political party in Ukraine with close ties to the Kremlin, *see* Redacted Indictment, *United States v. Manafort*, No. 1:17-cr-201, ECF No. 13 (D.D.C. Oct. 30, 2017). The Court may take judicial notice of these public filings. *See* Fed. Rule of Evidence 201; *E.E.O.C. v. St. Francis Xavier Parochial Sch.*, 117 F.3d 621, 624 (D.C. Cir. 1997); *Henok v. Kessler*, 78 F. Supp. 3d 452, 461 n.8 (D.D.C. 2015).

The facts alleged are remarkably strong—far stronger than is typical for conspiracy allegations, where, before discovery, Defendants normally have exclusive control of much of the evidence of the conspiracy; and far stronger than they need be at this stage of the proceedings, when Plaintiffs do not even need to show that the conspiracy they allege is *probable*, but merely that it is *plausible*. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). Plaintiffs clear that bar by a good amount and then some. As courts in this District have recognized, "conspiracies are rarely evidenced by explicit agreements, but nearly always must be proven through inferences that may be fairly drawn from the behavior of the alleged conspirators." *Oxbow Carbon & Minerals LLC v. Union Pac. R.R. Co.*, 81 F. Supp. 3d 1, 11 (D.D.C. 2015) (quoting *Anderson News, LLC v. Am. Media, Inc.*, 680 F.3d 162, 183 (2d Cir. 2012)). In this case, even before Plaintiffs have had any opportunity to take discovery, the facts alleged (which must be taken as true at this point in the litigation) make a powerful argument for the existence of a conspiracy. As discussed further below, courts have looked for four elements to demonstrate the existence of a conspiracy (in light of the rarity of signed conspiracy agreements): motive to act together; opportunity to reach an agreement in the form of repeated communications between the alleged co-conspirators; benefit to each party; and efforts to conceal the conspiracy. These showings are particularly indicative of a conspiracy if the alleged conspirators' actions are hard to explain in the absence of a conspiracy. The Complaint lays out all four elements in spades. And it is hard to explain the actions described except by reference to a conspiracy of the sort alleged.

First, the Complaint alleges, as the IC has confirmed, that Russia had a motive to help the Trump Campaign and indeed took steps to do so; and the Complaint alleges that the Campaign needed a way to salvage its dimming chances of winning the election.

Second, there was ample opportunity to reach an agreement. The Complaint alleges that

Mr. Trump and other individuals affiliated with the Campaign had longstanding personal and financial ties with Russia, and that senior members of the Campaign held discussions with Russian agents about helping Mr. Trump to win the election. The Complaint also alleges a series of communications and meetings between Defendants and Russian agents that span the period of time in which the conspiracy took place—communications that stand in stark contrast to anything seen in prior Presidential campaigns.

Third, the Complaint alleges an exchange of benefits that would be hard to understand absent a conspiracy. Mr. Trump and his associates intervened in the drafting of the RNC platform to make changes favorable to Russia—in an unexpected move that was without prior substantial support from the Republican Party—on the same day that Trump Campaign associates were meeting with the Russian Ambassador and just four days before Plaintiffs' private information was dumped online. Mr. Trump and his associates have gone to great lengths to oppose sanctions on Russia for its interference in the 2016 election and even sought to return to Russia property that was confiscated as punishment for Russia's actions. And Mr. Trump and his associates have repeatedly praised Russia and its President, Vladimir Putin, and denied or excused Russia's interference in the election, even after the evidence of Russian interference was well known and accepted by the IC. On the other side, the Complaint alleges that, as a result of the conspiracy, the participants in the conspiracy provided the contents of certain stolen DNC email accounts to WikiLeaks for disclosure, and did so in a manner and at a time optimally beneficial to the Trump Campaign.

Fourth, the Complaint alleges a long series of instances in which Defendants changed their stories, failed to disclose information relevant to the conspiracy even under penalty of perjury, and otherwise sought to conceal the actions alleged to be part of the conspiracy.

Perhaps because the pleadings are clearly sufficient to allow the Plaintiffs their day in court, Defendants' briefs focus instead on (a) atmospheric political arguments and (b) a barrage of meritless technical and procedural objections, all designed to deny Plaintiffs the opportunity to prove their case. The pages that follow explain why Plaintiffs have adequately stated all their substantive claims and why each of Defendants' procedural objections are without merit.[3]

Plaintiffs were injured. They have alleged ample facts—far more than courts in this District have previously required to survive a motion to dismiss—indicating that Defendants' participation in a conspiracy caused these injuries. Federal and state law provide Plaintiffs with protection against these injuries and a right of redress in this Court. Indeed, the courts are the only institutions in our government that can provide them with this redress. Plaintiffs will of course have to carry their burden of persuasion to obtain that relief, but they have done everything required of them under the law to entitle them to the opportunity to do so.

FACTUAL BACKGROUND[4]

The Russian government interfered with the 2016 U.S. presidential election in order to undermine the U.S. democratic process and help elect Mr. Trump. Compl. ¶¶ 83-84. As part of this effort, Russian intelligence hacked DNC servers and stole large volumes of data, including

[3] Also without merit is Defendants' suggestion that proceedings in this case would interfere with the criminal investigation. *See* Campaign Br. 2. There is nothing unusual about parallel civil and criminal proceedings. *See, e.g.*, *SEC v. Dresser Industries, Inc.*, 628 F.2d 1368, 1374 (D.C. Cir. 1980) (en banc) ("The civil and regulatory laws of the United States frequently overlap with the criminal laws, creating the possibility of parallel civil and criminal proceedings, either successive or simultaneous. In the absence of substantial prejudice to the rights of the parties involved, such parallel proceedings are unobjectionable under our jurisprudence."). In any event, the motion-to-dismiss stage is not the time to raise concerns about parallel proceedings, as they are not a basis for dismissal. Nor are Defendants' protestations about discovery relevant to the pending motions.

[4] The facts set forth here are drawn from the allegations in the Amended Complaint and recent public filings in other matters in this District, of which this court may take judicial notice. *See supra* note 2. These filings postdate the Amended Complaint but are consistent with the allegations therein, and underscore their (ever-increasing) plausibility.

the emails of DNC employees. *Id.* ¶¶ 86-87. On July 22, 2016, stolen DNC emails were posted on WikiLeaks, making them accessible to anyone in the world with Internet access. *Id.* ¶¶ 16, 42. These emails came from the accounts of seven DNC staffers—six members of the finance team (including Mr. Comer) and the Communications Director. *Id.* Because the finance-staff email accounts were targeted (and selected for publication from a range of stolen email accounts and other data), sensitive information about DNC donors (including Mr. Cockrum and Mr. Schoenberg), such as social security numbers, financial information, home addresses, personal email addresses, and personal phone numbers, was released to the world. *Id.* ¶¶ 17-20.

The dumping of the stolen emails—including Plaintiffs' private information—on the Internet was the result of a conspiracy involving Russia, the Trump Campaign, Mr. Stone, and WikiLeaks. Compl. ¶¶ 10-16. Defendants and their co-conspirators had motive to act together, there was ample opportunity to reach agreement, each party realized substantial benefits, and each party took steps to conceal what had occurred. Furthermore, each party took actions that would be illogical absent a conspiracy.

I. Financial and Personal Ties Between Russia and Trump Campaign Leadership.

The conspiracy was made possible, in part, by longstanding ties that existed among the conspirators—ties long pre-dating the Campaign. Many of those involved with the Trump Campaign had deep personal and financial ties to Russia going back decades. The candidate himself had longstanding financial connections to Russia and had relied for years on funding from Russian oligarchs to finance his real-estate projects. *Id.* ¶¶ 103-111. Campaign Chairman Paul Manafort was a paid operative for a pro-Russian political party in Ukraine with close ties to the Kremlin. *Id.* ¶ 113. In 2005, Manafort proposed to a Russian oligarch and close Putin ally a plan to influence politics inside the United States to benefit Mr. Putin's government. *Id.* Foreign-policy

advisor Carter Page had sufficient contact with Russian intelligence that the FBI obtained a FISA warrant based on probable cause to believe that he was acting as an agent of a foreign power. *Id.* ¶¶ 115-116. Campaign adviser Michael Flynn had received payments from Russian companies and had attended a gala hosted by RT, a media entity that the intelligence community described as "[t]he Kremlin's principal international propaganda outlet," where he sat with Mr. Putin and his chief of staff. *Id.* ¶ 117. Jared Kushner, a senior Campaign adviser and Mr. Trump's son-in-law, had longstanding financial and personal ties to Russian oligarchs. *Id.* ¶ 118. And George Papadopoulos, a member of the Campaign's national-security team, described himself as an intermediary with the Kremlin. *Id.* ¶¶ 94-95.

II. Extensive Secret Meetings During the Campaign.

The ties between agents of the Trump Campaign and of Russia led to dozens of interactions during the campaign, out of which came an agreement to disseminate stolen DNC emails to benefit the Campaign in exchange for policy concessions to benefit Russia. *Id.* ¶¶ 88-90, 92. Several contacts between the Campaign and Russian agents appear relevant to the formation of an agreement, demonstrating the Campaign's willingness—even eagerness—to collaborate with Russia to interfere in the election and harm the Campaign's opponent.

For example, on March 24, 2016—three days after Mr. Trump, in a *Washington Post* interview, identified Mr. Papadopoulos as one of five named members of his Campaign's foreign-policy team—Mr. Papadopoulos sent an email to high-ranking Campaign officials and other members of the Campaign's national-security advisory committee offering to set up a meeting with Russian leadership, including Mr. Putin, "to discuss US-Russia ties under President Trump." *Id.* ¶ 94. Mr. Papadopoulos said he was acting as an intermediary with the Russian government and that his "Russian contacts welcomed the opportunity." *Id.* Rather than immediately

report these contacts with a hostile foreign power to the FBI, the Campaign welcomed these overtures. As described in a Statement of the Offense entered as part of a plea agreement between Mr. Papadopoulos and the Special Counsel, Mr. Papadapoulos's Campaign supervisor responded that he would "work it through the campaign" and added: "Great work." *See* Statement of the Offense ¶ 8, *United States v. Papadopoulos*, No. 1:17-cr-182-RDM, ECF No. 19 (D.D.C. Oct. 5, 2017) ("Papadopoulos SOO").

On March 31, Mr. Papadopoulos attended a meeting of the national-security advisory committee and Mr. Trump, Compl. ¶ 95, where he said that he had Russian government connections and could help arrange a meeting between Mr. Trump and Mr. Putin. Papadopoulos SOO ¶ 9. Over the next months, Mr. Papadopoulos continued to attempt to arrange meetings between the Campaign and Russian officials. Compl. ¶ 94; *see* Papadopoulos SOO ¶¶ 10-21. Mr. Papadopoulos learned on April 26, 2016 that the Russians had "dirt" on Mr. Trump's opponent in the form of "thousands of emails." Papadopoulos SOO ¶ 14. High-ranking Campaign officials did nothing to discourage, and in some cases encouraged, ongoing communications with Russian agents. *Id.* ¶¶ 20, 21.b. And on July 7, 2016, Campaign representative Carter Page traveled to Moscow to meet with Russian officials close to Putin—a trip approved by then-Campaign manager Corey Lewandowski. Compl. ¶ 100.

Mr. Papadopoulos was not the only Trump Campaign agent receptive to Russian entreaties. On June 9, 2016, Donald Trump Jr., Mr. Kushner, and Mr. Manafort met with a Kremlin-connected Russian lawyer described in emails as a "Russian government attorney who is flying over from Moscow." *Id.* ¶ 129. Mr. Trump Jr. agreed to attend this meeting after being promised damaging material about his father's opponent as part of a Russian-government effort to aid the Trump Campaign. *Id.* An email to Mr. Trump Jr. about the meeting stated, "[t]his is obvious-

ly very high level and sensitive information but is part of Russia and its government's support for Mr. Trump." *Id.* Mr. Trump Jr. responded enthusiastically by email: "If it's what you say I love it especially later in the summer." *Id.* "Later in the summer" is, of course, precisely when Plaintiffs' emails were released.

Mr. Trump, Mr. Manafort, then-Senator Jeff Sessions, and other Campaign agents also had repeated contact with Russian officials and agents in the period leading up to the release of the DNC emails. In one such instance, Mr. Kushner and Mr. Sessions met in person with Russian Ambassador Kislyak just four days before the hacked emails were released. On the same day as that meeting, Campaign staffer J.D. Gordon successfully steered the Republican Party platform in a more Russia-friendly direction. *See, e.g.*, Compl. ¶¶ 96-97, 99, 101.

III. Motive to Collaborate and Exchange of Benefits.

Both sides had ample motive to work together—Russia to maximize the disruptive impact of the stolen emails and extract policy concessions from the Trump Campaign, and the Campaign to improve its chances of defeating Secretary Clinton. *Id.* ¶¶ 120-127. Russian efforts began to bear fruit shortly before the release of the DNC emails: the Campaign cast doubt on the U.S. commitment to NATO, *id.* ¶ 151, undertook efforts to lift sanctions on Russia, *id.* ¶¶ 152-155, and generally adopted a markedly more favorable posture toward Russia and Mr. Putin, *id.* ¶¶ 156-159. These actions were astonishing: no prior Presidential nominee had ever come close to casting doubt on NATO, nor was there any identifiable, credible movement to do so prior to Mr. Trump's adoption of this position. Just four days before the stolen emails were dumped on WikiLeaks, the Campaign intervened to remove language condemning Russia's action in Ukraine from the Republican platform. *Id.* ¶¶ 147-148. Mr. Gordon, the Campaign's national-security policy representative at the Republican National Convention, initially denied involve-

ment in shaping this part of the platform. He later admitted that he had been personally involved in softening the language on Ukraine to align it with Mr. Trump's views. *Id.* ¶¶ 36, 149, 217.

On July 22, 2016, the stolen DNC emails were disseminated on WikiLeaks, causing substantial harm to Plaintiffs and other Americans. *Id.* ¶ 160. The leak targeted DNC finance staff in particular and was well-timed to maximize political fallout. *Id.* ¶¶ 161, 165. In addition to Plaintiffs' private information—information that was of no public interest, but the publication of which put donors and potential donors on notice that any information they might share with the DNC was not secure—the dump included other emails that the media viewed as providing insight into tensions within the Democratic Party just days before the Party was set to gather for its nominating convention. The Campaign immediately sought to maximize its advantage from the release of the hacked emails. Mr. Trump mentioned WikiLeaks more than 160 times during his campaign appearances and even called on Russia to continue its cyberattacks, saying: "Russia, if you're listening, I hope you're able to find the 30,000 [Hillary Clinton] emails that are missing." *Id.* ¶¶ 166-169. When later asked if that comment was serious, Mr. Trump declined to explain the comment away as a joke, instead saying "If Russia or China or any other country has those emails, I mean, to be honest with you, I'd love to see them." *Id.* ¶ 169.

Shortly after the emails were published, Mr. Stone admitted in an interview that he had communicated with WikiLeaks founder Julian Assange but said he was "not at liberty" to discuss those communications. *Id.* ¶ 162. Mr. Stone also began to engage in public and private Twitter conversations with the hacker Guccifer 2.0, who had claimed credit for the DNC hack. *Id.* ¶¶ 163-164, 170-172. Mr. Stone was sufficiently connected to Mr. Assange and WikiLeaks to accurately predict—six weeks in advance—the October 7, 2016 release of Clinton campaign chairman John Podesta's emails. *Id.* ¶¶ 173-179.

IV. Wide-Ranging Cover-Up.

Last, there is the cover-up. Defendants and their agents have repeatedly and falsely denied or failed to disclose longstanding personal and financial relationships with Russia, ¶¶ 199-205, and contacts with Russians during and after the campaign, *id.* ¶¶ 183-198. Despite having met with Russian agents specifically for the purpose of benefitting the Campaign by obtaining damaging information about Mr. Trump's opponent, the Campaign's agents and associates called allegations that Russia was working to help Mr. Trump "disgusting," "phony," and "absurd." *Id.* ¶¶ 184-186. The Campaign falsely denied having approved Mr. Page's trip to Moscow. *Id.* ¶¶ 100, 187. It concealed its involvement with ensuring that the Republican Party platform would be favorable toward Russia. *Id.* ¶ 217. Agents of the Campaign repeatedly failed to disclose contacts with Russian agents on security clearance forms, *id.* ¶¶ 194-198; in one instance, Mr. Kushner failed to disclose his attempt to establish a communication back channel with Russia to avoid detection by U.S. intelligence, *id.* ¶ 195. Mr. Papadopoulos and Mr. Flynn both lied to the FBI about their interactions with Russian agents. *See* Papadopoulos SOO; Statement of the Offense, *United States v. Flynn*, No. 1:17-cr-232-RC, ECF No. 4 (D.D.C. Dec. 1, 2017) ("Flynn SOO"). They continue to cast doubt on or deny Russian involvement in the election, in the face of overwhelming evidence to the contrary. *Id.* ¶¶ 206-216. Mr. Trump has done nothing to hold Russia accountable, repeatedly attempting instead to interfere with ongoing law enforcement investigations, going so far as to fire the FBI Director in order to relieve what the President described as "great pressure because of Russia." *Id.* ¶¶ 218-219.

STANDARD OF REVIEW

Pursuant to Rule 12(b)(1), Plaintiffs bear the burden of showing that this Court has subject matter jurisdiction. *See, e.g.*, *Moms Against Mercury v. FDA*, 483 F.3d 824, 828 (D.C. Cir.

2007). However, in making the determination, the court must "assume the truth of all material factual allegations in the complaint and construe the complaint liberally, granting plaintiff the benefit of all inferences that can be derived from the facts alleged." *Am. Nat'l Ins. Co. v. FDIC*, 642 F.3d 1137, 1139 (D.C. Cir. 2011).

Similarly, under Rule 12(b)(2), "[t]he plaintiff has the burden of establishing a factual basis for the exercise of personal jurisdiction over the defendant," *Crane v. N.Y. Zoological Soc'y*, 894 F.2d 454 (D.C. Cir. 1990), which can be satisfied "with a *prima facie* showing of pertinent jurisdictional facts," *United States v. Philip Morris, Inc.*, 116 F. Supp. 2d 116, 121 (D.D.C. 2000). "In determining whether such a basis exists, factual discrepancies appearing in the record must be resolved in favor of the plaintiff." *Crane*, 894 F.2d at 454. "When personal jurisdiction is challenged, the district judge has considerable procedural leeway in choosing a methodology for deciding the motion. . . . The Court may rest on the allegations in the pleadings, collect affidavits and other evidence, or even hold a hearing." *Sharp Corp. v. Hisense USA Corp.*, --- F. Supp. 3d ---, 2017 WL 5449805, at *3 (D.D.C. Nov. 13, 2017).

Under Rule 12(b)(3), "a court should dismiss or transfer a plaintiff's complaint if the plaintiff's chosen venue is improper or inconvenient. While the plaintiff bears the burden of proving that venue is proper, a court should accept the plaintiff's well-pled factual allegations as true, resolve any factual conflicts in the plaintiff's favor, and draw all reasonable inferences in favor of the plaintiff." *Myers v. Holiday Inns, Inc.*, 915 F. Supp. 2d 136, 144 (D.D.C. 2013).

Finally, under Rule 12(b)(6), "the Court must assess the complaint to determine whether it contains sufficient facts that, when accepted as true, evidence a claim that is 'plausible on its face.'" *Lannan Found. v. Gingold*, --- F. Supp. 3d ---, 2017 WL 4857421, at *6 (D.D.C. Oct. 25, 2017) (quoting *Twombly*, 550 U.S. at 570). "When a plaintiff pleads factual content that allows

the court to draw the reasonable inference that the defendant is liable for the misconduct alleged, then the claim has facial plausibility." *Barker v. Conroy*, --- F. Supp. 3d ---, 2017 WL 4563165, at *3 (D.D.C. Oct. 11, 2017). "'The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully.'" *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "A court must treat the complaint's factual allegations as true, 'even if doubtful in fact.'" *Id.* (quoting *Twombly*, 550 U.S. at 555).

ARGUMENT

I. This Court Has Subject-Matter Jurisdiction.

A. Plaintiffs have alleged sufficient injury and causation for Article III standing.

Mr. Stone contends erroneously that Plaintiffs have failed to meet the Article III injury and causation requirements. Stone Br. 3. "To demonstrate standing, a plaintiff must show that she has suffered an 'injury in fact' that is 'fairly traceable' to the defendant's actions and that is 'likely to be redressed' by the relief she seeks." *Attias v. Carefirst, Inc.*, 865 F.3d 620, 625 (D.C. Cir. 2017). Plaintiffs have met this bar.

Mr. Stone's argument about injury fails for at least four reasons. First, it ignores many of Plaintiffs' alleged injuries, including lost wages, diminished capacity to find work, and medical expenses; severe emotional distress resulting from dissemination of personal and identifying information; and resulting instances of actual identity theft (rather than merely a heightened risk), harassment, and damage to important personal and professional relationships. *See* Compl. ¶¶ 17-18, 49-50, 60-78. These injuries create standing and are ones that Plaintiffs' tort claims are designed to remedy. Second, the argument about identity theft, *see* Stone Br. 5, is contradicted by the D.C. Circuit's recent holding that a heightened risk of future identity theft can serve as the basis for standing under Article III. *See Attias*, 865 F.3d at 626. Third, the injury claimed by Plaintiffs here is not limited to possible future identity theft, but includes *actual* identity theft.

See Compl. ¶¶ 17-18, 49-50; *cf. SAIC*, 45 F. Supp. 3d at 29. Finally, "[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); *see also Attias*, 865 F.3d at 626.

Mr. Stone's causation argument is just a merits argument disguised as a jurisdictional one. Stone Br. 3; *id.* at 6 ("Stone is not connected to a conspiracy to hack or publish."). It is also meritless. "Article III standing does not require that the defendant be the most immediate cause, or even a proximate cause, of the plaintiffs' injuries; it requires only that those injuries be 'fairly traceable' to the defendant." *Attias*, 865 F.3d at 629. Here, Plaintiffs allege that Mr. Stone was part of a conspiracy to disseminate hacked information and that this conspiracy directly resulted in Plaintiffs' injuries. Their injuries are "fairly traceable" to Mr. Stone.

B. This Court has diversity jurisdiction over Plaintiffs' state-law claims.

Defendants do not challenge the diversity of the parties but question whether each Plaintiff satisfies the amount-in-controversy requirement. Stone Br. 9; Campaign Br. 8-9. When ruling on a motion to dismiss under 28 U.S.C. § 1332, the Court must dismiss "only if it appears *to a legal certainty* that the amount in controversy barrier *cannot* be breached." *Rosenboro v. Kim*, 994 F.2d 13, 19 (D.C. Cir. 1993). Courts therefore must "be very confident that a party cannot recover the jurisdictional amount before dismissing the case for want of jurisdiction." *Id*. at 17. Furthermore, in addition to concrete or easily quantifiable damages, "inherently nebulous unliquidated damage claims" are included in calculating the amount in controversy. *Rosenboro*, 994 F.2d at 19; *see also Compton v. Alpha Kappa Alpha Sorority, Inc*., 64 F. Supp. 3d 1, 14-15 (D.D.C. 2014), *aff'd*, 639 F. App'x 3 (D.C. Cir. 2016).

Here, *each* Plaintiff has alleged economic and non-economic injuries that exceed the $75,000 threshold. Mr. Cockrum alleges that he has been the target of identity theft, which requires constant effort and vigilance on his part, and has caused substantial stress and anxiety.

Compl. ¶¶ 17, 61-64. Mr. Schoenberg's experience has been substantially similar. Compl. ¶¶ 18, 65-68. Mr. Comer has incurred significant medical expenses, lost wages, reputational harm, severe emotional distress, anxiety, and depression. Compl. ¶¶ 19, 69-77. Furthermore, Plaintiffs have requested punitive damages, which must be included in the amount-in-controversy analysis. *See* Compl. ¶¶ 230, 239, 251, Prayer for Relief; *James v. Lusby*, 499 F.2d 488, 493 (D.C. Cir. 1974). Given the outrageous and malicious nature of Defendants' alleged conduct, punitive damages could easily exceed $75,000 per plaintiff. Compl. ¶ 58. In short, there is no basis to find with legal certainty that Plaintiffs cannot satisfy the amount-in-controversy requirement.[5]

C. This Court also has supplemental jurisdiction over the state-law claims.

Even without diversity jurisdiction, the Court still would have supplemental jurisdiction over Plaintiff's state-law claims because those claims "form part of the same case or controversy" as a claim over which the federal court may exercise original jurisdiction under Article III. 28 U.S.C. § 1367(a). Defendants accept that the state and federal claims form part of the same case or controversy and do not question that they derive from a common nucleus of operative fact—namely, the conspiracy among Defendants and others to disseminate stolen information. Rather, Defendants suggest in passing that the Court should exercise its discretion to decline jurisdiction over the state claims. But Defendants fail to show that state issues substantially predominate or raise complex issues of state law.

Courts consider whether state issues substantially predominate "in terms of proof, of the scope of the issues raised, or of the comprehensiveness of the remedy sought." *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966). Here, state law issues do not predominate.

[5] Even if this Court found that only one Plaintiff met the $75,000 threshold, it still could exercise supplemental jurisdiction over all of Plaintiffs' claims. *See Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546 (2005).

Plaintiffs' state and federal claims all depend on showing that there was a conspiracy between Defendants and others to disseminate information stolen from the DNC. Moreover, the relief sought is the same and includes both compensatory and punitive damages. The factors Defendants point to—the order in which the counts appear in the Complaint and a phrase on a website intended to explain the case to interested non-lawyers, *see* Campaign Br. 9—have no relevance to the analysis. Accordingly, Defendants cannot show that the state-law claims "each require different elements of proof than the federal claims" or are marked by near-total "legal and factual separation from the federal claims." *Wisey's #1 LLC v. Nimellis Pizzeria LLC*, 952 F. Supp. 2d 184, 193 (D.D.C. 2013) (declining to exercise supplemental jurisdiction).

Nor have Defendants provided any reason to think that "the state law claims are more complex or require more judicial resources to adjudicate or are more salient in the case as a whole than the federal law claims." *Diven v. Amalgamated Transit Union International & Local 689*, 38 F.3d 598, 602 (D.C. Cir. 1994). The state-law claims do not raise "novel or complex issue[s] of state law." 28 U.S.C. § 1367(c)(1); *see* Campaign Br. 9. "As a general matter, common law contract and tort claims do not present novel or complex questions of state law." Wright & Miller § 3567.3. Defendants offer no reason to think that these common-law tort claims are particularly complex or that adjudicating the state-law claims will require more judicial resources than adjudicating the federal claim. Nor are the state-law claims somehow "more salient" than the federal claim: Plaintiffs' claims under § 1985(3) go directly to the conspiracy at the heart of all claims in this case. In sum, the state law claims do not "predominate" and there is no reason to decline to exercise supplemental jurisdiction over those claims.

II. This Court Has Personal Jurisdiction Over Defendants and Is a Proper Venue.

In this case, a successful presidential campaign (of all things) asserts that it would be unreasonable to expect it to respond and litigate in Washington, D.C. (of all places). It is a remark-

able notion, and an incorrect one. Defendants conspired in D.C. with people who hacked servers in D.C. to release Plaintiffs' personal information from D.C. to the world, predictably causing harm in D.C. to Mr. Comer's professional reputation and to all Plaintiffs' ability to support candidates for office. The Trump Campaign's *raison d'etre*, Mr. Trump, lives, works, and directs the Campaign's affairs in D.C. And many of the witnesses and much of the evidence on which Plaintiffs' claims rely are in D.C. Yet Defendants protest that they cannot be haled into court here.

As explained below, personal jurisdiction is proper under two independently sufficient theories of specific jurisdiction. The Campaign is also subject to the general jurisdiction of this forum because it is temporarily at home in D.C. Defendants' argument is inconsistent with the purposes of the doctrines governing personal jurisdiction and venue, and it relies on a crabbed reading of the relevant legal standard as well as of Plaintiffs' Complaint and the harms that it alleges. Personal jurisdiction is about "traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 316 (1945). For that reason, "there are no mechanical tests or talismanic formulations for determining personal jurisdiction, and the facts of each case must be weighed against the notions of fairness, reasonableness, and substantial justice." *Jacobsen v. Oliver*, 201 F. Supp. 2d 93, 104 (D.D.C. 2002) (Huvelle, J.). The Campaign successfully placed its candidate on ballots in D.C. both in the primary elections and in the general election, voluntarily participating in a civic process in D.C. and asking residents of D.C. to let Mr. Trump represent them. The Campaign can hardly protest that it has done nothing to make itself accountable in a place where it voluntarily availed itself of the political process.[6] Personal jurisdiction here is fair and this Court is a proper venue.

[6] Yes, it follows from this last point that most presidential campaigns would be subject to personal jurisdiction in every state. But a candidate for President of the United States, seeking votes in every state, can hardly argue that there are some states to which s/he has no connection.

A. This Court may exercise specific personal jurisdiction over Defendants.

Specific jurisdiction requires a "relationship among the defendant, the forum, and the litigation." *Walden v. Fiore*, 134 S. Ct. 1115, 1126 (2014). The defendant must have purposefully established contacts with the forum, and the claims brought in the forum must "arise out of or relate to" those contacts. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985). "[C]ontacts" fall into two broad categories: (1) actions within the forum, and (2) actions outside the forum that cause effects within the forum. A claim "arises out of" those contacts whenever "the claim [is] related to or substantially connected with . . . activity in the District . . . , that is . . . [where] it ha[s] . . . some 'discernible relationship' to [that] activity." *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 335 (D.C. 2000).

Specific personal jurisdiction over the Defendants exists here because (1) Defendants' actions in the District (and those of their co-conspirators) gave rise to Plaintiffs' claims; and (2) Defendants' actions foreseeably caused harm in the District, which is the basis for the claims.[7]

1. Plaintiffs' claims arise from Defendants' conduct in D.C.

This Court may exercise personal jurisdiction over Defendants because their conduct in the District gave rise to Plaintiffs' claims. Under the D.C. long-arm statute, a court may exercise jurisdiction over a person "as to a claim for relief arising from the person . . . transacting any business in the District of Columbia." D.C. Code § 13-423(a)(1). The reach of this provision is coextensive with that of the Due Process Clause. *Shoppers Food Warehouse*, 746 A.2d at 333.

[7] Plaintiffs believe that the allegations in the Complaint are sufficient to establish that this Court may exercise personal jurisdiction over Defendants. If the Court disagrees, Plaintiffs should be allowed to take jurisdictional discovery. *See, e.g.*, *Alkanani v. Aegis Defense Servs., LLC*, 976 F. Supp. 2d 13, 22 (D.D.C. 2014) (in assessing the question of personal jurisdiction, "[t]he court need not confine itself to the allegations in the complaint as with other motions to dismiss; rather, it can consider materials outside of the pleadings, including declarations and evidence produced during the course of jurisdictional discovery"); *GTE New Media Servs. Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1351 (D.C. Cir. 2000).

The Campaign does not contest that it transacted business in D.C., but it claims that Plaintiffs' claims do not arise from that transaction of business. *See* Campaign Br. 13. However, "the District of Columbia Court of Appeals interpreted the phrase 'arise from' broadly and established a 'flexible' nexus test to determine when claims can be said to 'arise from' contacts with the forum." *Jacobsen*, 201 F. Supp. 2d at 105. A claim "arise[s] from" contacts with the forum whenever it bears some "discernible relationship" to those contacts. *Shoppers Food Warehouse*, 756 A.2d at 335. Here, Defendants' had extensive contacts with the forum that bear a substantial relationship to the formation of the conspiracy out of which Plaintiffs' claims arise. To wit:

- The Campaign's foreign policy team, which managed and directed the interactions with Russia, was based in D.C. Compl. ¶¶ 35-37. Then-Senator Sessions, who chaired the team, worked in D.C., as did other campaign foreign policy advisors. *Id.*

- Defendants negotiated the conspiracy in part through meetings with their co-conspirators held in D.C. *See, e.g.*, Compl. ¶ 95 (meeting with Campaign's national-security advisors, including Papadopoulos, at Trump International Hotel in D.C.); *id.* ¶ 96 (meeting between Trump, Kushner, Sessions, and Kislyak at the Mayflower Hotel in D.C.); *id.* ¶ 154 (meetings between Flynn and Kislyak in D.C.).

- They negotiated the conspiracy in part through communications during which at least one party was in D.C. *See, e.g.*, *id.* ¶ 92 (Manafort call to Kislyak, whose office is in D.C.).

- They attempted to cover their tracks from within D.C. *See, e.g.*, *id.* ¶ 188 (Hope Hicks, in D.C., denies Campaign contacts with Russians); *id.* ¶ 192 (Sarah Huckabee Sanders, in D.C., does same); *id.* ¶ 203 (Trump, in D.C., tweets that he "do[es]n't know Putin"); *id.* ¶ 204 (Trump, in DC, holds press conference in which he denies anything to do with Russia); *id.* ¶ 216 (Stone, in DC, gives speech denying connections to Russia); *id.* ¶ 218 (Trump, at dinner in DC, pressures former FBI Director James Comey to drop investigation into Campaign contacts with Russia); *id.* ¶ 219 (Trump, in D.C., fires Comey and meets with Kislyak and Sergey Lavrov).

These activities in D.C. are at the heart of the conspiracy from which Plaintiffs' claims arise.[8]

[8] As a general matter, the Campaign directed much of its conduct towards D.C. and conducted a substantial amount of business in D.C. For example, "Trump['s] campaign had successfully petitioned for him to appear on the ballot in the [D.C.] in order for him to stand for election in [D.C.]." Compl. ¶ 31; *see also id.* ¶¶ 36-37 (discussing Campaign activity in D.C.). The Cam-

Although the precise moment when Defendants finalized their illegal agreement is unknown, that moment is also irrelevant. Complicated deals take time. And a court in this District has upheld specific jurisdiction where a "conspiracy allegedly came to its *inception*" in D.C., even though it did not come to its conclusion here. *Dooley v. United Techs. Corp.*, 786 F. Supp. 65, 72 (D.D.C. 1992), *abrogated on other grounds by FC Inv. Grp. LC v. IFX Markets, Ltd.*, 529 F.3d 1087 (D.C. Cir. 2008). Plaintiffs' claims arose from the Defendants' ongoing course of conspiratorial conduct in D.C. and, therefore, specific jurisdiction over them is proper. It is more than coincidence that the Special Counsel has empaneled a grand jury in D.C., Compl. ¶ 85, and initiated proceeding against Mr. Manafort, Mr. Flynn, and Mr. Papadopoulos in this District.

Even putting aside Defendants' own conduct in D.C., this Court may exercise jurisdiction over Defendants because their co-conspirators acted here, and those actions gave rise to Plaintiffs' claims. Under this approach—known as the "conspiracy theory" of personal jurisdiction—Section 13-423(a)(1) of the D.C. long-arm statute (and the Due Process Clause) are satisfied because "[p]ersons 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 Amendment Found. v. U.S. Conference of Mayors*, 274 F.3d 521, 523 (D.C. Cir. 2001); *see also Edmond v. U.S. Postal Serv. Gen. Counsel*, 949 F.2d 415, 424-25 (D.C. Cir. 1991) (applying another provision of the D.C. long-arm statute).

In this regard, an additional critical component of the conspiracy took place in D.C., where Russian hackers gained access to servers and stole DNC emails. Compl. ¶ 86. Although

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paign undertook this activity to elect Trump President (a position headquartered in D.C.)—the same purpose that motivated the conspiracy. Under the nexus test, the claims in this case bear more than a discernible relationship to the Campaign's contact with this forum. But even if Defendants' general contacts with D.C. were insufficient to warrant personal jurisdiction, their contacts specifically related to the conspiracy are more than adequate, as discussed above.

Plaintiffs do not seek to hold Defendants directly liable for hacking the DNC servers in D.C., that act is a part of the conspiracy and so relevant to Plaintiffs' claims. Co-conspirators can be liable for acts that took place before they joined the conspiracy. *See, e.g.*, *United States v. Bridgeman*, 523 F. 2d 1099, 1108 (D.C. Cir. 1975) ("An individual who joins an already formed conspiracy knowing of its unlawful purpose may be held responsible for acts done in furtherance of the conspiracy both prior to and subsequent to his joinder."). Plaintiffs allege that Defendants conspired with people who hacked servers located in D.C., and the claims in this case arise from that hack. That is enough to support personal jurisdiction over Defendants in this District.[9]

2. Defendants caused harm in D.C.

This Court may also exercise specific personal jurisdiction over Defendants because their actions foreseeably caused harm in D.C., and that harm is the basis of Plaintiffs' claims. First, Defendants harmed Mr. Comer's professional reputation in D.C. Second, Defendants harmed Plaintiffs' ability to support their preferred candidates for elected office, and D.C. was the locus of Plaintiffs' political advocacy.

Under D.C. Code § 13-423(a)(4), D.C. courts may exercise personal jurisdiction over defendants who cause tortious injury in the District if they also have other minimum contacts within the District. Due process requires that the tortious injury be caused by conduct that was purposely directed at the forum. *Walden*, 134 S. Ct. at 1123-24. Defendants concede that they have the other minimum contacts necessary to support jurisdiction under Section (a)(4) and so are left to contend that the Complaint does not allege tortious injury in the District. They are wrong.

Mr. Comer pleads a harm to his professional reputation in D.C. Defendants argue that

[9] Because Plaintiffs plausibly allege that Mr. Stone was part of the conspiracy, this Court has personal jurisdiction over him. And Mr. Stone was in D.C. on multiple occasions during the relevant time period. Compl. ¶ 41.

this "is not good enough" because the professional harms that Mr. Comer suffered in this district arose from information whose revelation, Defendants contend, is not tortious. Campaign Br. 10-11. According to Defendants, "[t]he only alleged tort here is the disclosure of information suggesting Comer's sexual orientation." *Id.* at 11. That is false. Mr. Comer alleges that his professional reputation has been injured by the wrongful disclosure of many of his private communications. *See, e.g.*, Compl. ¶ 72 ("Mr. Comer's working environment deteriorated rapidly after his emails' release"); *id.* ¶ 74 ("After being marginalized at work as a result of the publication of his hacked emails, Mr. Comer determined that he was required to leave his job."); *id.* ¶ 75 (describing threatening phone calls to Mr. Comer's office in D.C.). Defendants' contention that disclosure of private "gossip" cannot form the basis of a tort action, Campaign Br. 11, is also wrong (and, in any event, goes to the merits of Mr. Comer's claims rather than personal jurisdiction). *See infra* Part III.C.1.c. Mr. Comer was harmed in D.C., and Defendants may be compelled to answer for that harm here.

And Defendants ignore Plaintiffs' claims under 42 U.S.C. § 1985(3), which allege a distinct, D.C.-centered harm. Plaintiffs sent emails to and from the DNC for the purpose of organizing in support of their preferred candidate for President. The DNC, headquartered in D.C., was the locus of the Plaintiffs' political action. Plaintiffs therefore suffered harm to their D.C.-focused advocacy for a political candidate, and Defendants may be sued here for that reason.

B. This Court may exercise general personal jurisdiction over the Campaign because it is temporarily at home in D.C.

As described above, this Court has specific personal jurisdiction over Defendants. In addition, the Court may exercise general personal jurisdiction over the Campaign because, since January 20, 2017, the Campaign has been controlled from D.C.

An entity may be sued on any claim whatsoever in a forum with general jurisdiction over

it. A court may exercise general jurisdiction over a corporation whose "affiliations with the [forum] State are so continuous and systematic as to render it essentially at home in the forum State." *Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (2014). A corporation's state of incorporation and principal place of business are the "paradigm" fora for general jurisdiction—but those are not the *exclusive* fora. Jurisdiction also is proper over a foreign corporation *temporarily* headquartered in the forum state. *See Daimler*, 134 S. Ct. at 755-56; *see also Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 448 (1952). Since January 20, 2017, the Trump Campaign has been headquartered in D.C. The person whose reelection it exists to support lives and works here; his staff lives here; and he directs the Campaign's activities here. Compl. ¶ 40. Thus, this Court may exercise general jurisdiction over the Campaign because D.C. is its "principal, if temporary, place of business." *Daimler*, 134 S. Ct. at 756.

C. Venue is proper in this Court because a substantial portion of the acts complained of took place in D.C.

Defendants argue that venue here is improper for essentially the same reasons that they argue the Court lacks personal jurisdiction over Defendants. They principally contend that "Plaintiffs' assertions that the Campaign formed, directed, or planned the conspiracy from the District are conclusory," and, therefore, that venue is improper here. Campaign Br. at 16. But this contention lives and dies with the merits of the suit itself.

Given that this Court may exercise personal jurisdiction over Defendants, venue is easy. Venue is proper in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1391(b)(2). As previously discussed, a substantial portion of the events alleged in this case took place in D.C. The emails whose disclosure is the center of this case were sent to and from people in D.C. and stored on servers in D.C.; the conspiracy alleged in this case was formed and coordinated in part in D.C.; and the harms alleged in

this case happened, in part, in D.C. Proceedings related to the ongoing criminal investigation are being held in this district. Venue is proper here.

III. Plaintiffs Have Adequately Stated Claims for Violations of D.C. and Federal Law.

Because this Court has jurisdiction over this case, it should proceed to the merits and deny Defendants' Motions to Dismiss. Based on the allegations in the Complaint, the existence of a conspiracy between Defendants, Russia, and WikiLeaks is not only plausible; it is probable. Not only have Plaintiffs satisfied their burden to plausibly allege a conspiracy, but they have adequately alleged the elements of the underlying D.C. tort claims. Plaintiffs have also successfully pleaded a cause of action under the support-and-advocacy clauses of 42 U.S.C. § 1985(3). Those clauses make actionable conspiracies to intimidate, threaten, or injure voters because of their support or advocacy for a candidate for federal office. Defendants' conduct fits squarely within the scope of conduct covered by the statute.

A. Plaintiffs have adequately alleged a conspiracy.

1. Plaintiffs have satisfied the pleading standard for conspiracy.

Even at this early stage of the case, the evidence of a conspiracy is compelling. It easily clears the standard at the motion-to-dismiss stage, which is plausibility. *See Twombly*, 550 U.S. at 556; *Iqbal*, 556 U.S. at 678. Indeed, "[a] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely." *Twombly*, 550 U.S. at 556. Plaintiffs' version of events need not even be more plausible than other possible versions. *See Banneker Ventures, LLC v. Graham*, 798 F.3d 1119, 1129 (D.C. Cir. 2015).

As courts in this District have recognized, "conspiracies are rarely evidenced by explicit agreements, but nearly always must be proven through inferences that may be fairly drawn from the behavior of the alleged conspirators." *Oxbow Carbon*, 81 F. Supp. 3d at 11 (quoting *Ander-*

son News, 680 F.3d at 183); *see also Wheeler v. United States*, 977 A.2d 973, 982 n.19 (D.C. 2009) ("[T]he evidence supporting a conspiracy conviction nearly always is circumstantial because [t]here is rarely in a conspiracy case direct evidence of the conspiracy or proof of declarations." (second alteration in original)).

The Complaint's allegations easily support such inferences. Defendants argue that Plaintiffs' allegations are "implausible" because they do not clearly identify the members of the conspiracy and precisely how the hacking and dissemination of the stolen information occurred. Stone Br. 20; *see also* Campaign Br. 36. But Plaintiffs need not identify a "specific time, place, or person involved in [an] alleged conspiracy" nor "when and where the illicit agreement took place." *Oxbow Carbon*, 81 F. Supp. 3d at 12. Furthermore, while Plaintiffs have plausibly alleged that the conspiracy between Defendants and their co-conspirators explicitly included the dissemination of the stolen emails, that is not a prerequisite to liability. Whatever the precise contours of the agreement, Defendants are liable for acts taken in furtherance of the conspiracy, whether or not they actively participated in them or even knew about them. *See Halberstam v. Welch*, 705 F.2d 472, 481 (D.C. Cir. 1983). In short, Plaintiffs need only plead "enough facts to raise a reasonable expectation that discovery will reveal evidence of illegal agreement." *Twombly*, 550 U.S. at 556.

The allegations in this case do considerably more than that: some of those allegations, such as the existence of meetings premised specifically on Russian offers to help the Campaign by damaging Mr. Trump's opponent and the Campaign's response proposing timing for release of that information, are damning. But even if the allegations were weaker, a claim of conspiracy should not be dismissed if it does not present direct evidence of the illegal agreement.

Examples of circumstantial evidence supporting a plausible inference of conspiracy in-

clude "parallel behavior that would probably not result from chance, coincidence, independent responses to common stimuli, or mere interdependence unaided by an advance understanding among the parties." *Twombly*, 550 U.S. at 556 n.4. Conspiracies may be inferred through "allegations of interdependent conduct, accompanied by circumstantial evidence and plus factors," which may include (but are not limited to): "(1) a common motive to conspire; (2) evidence that shows that the parallel acts were against the apparent individual economic self-interest of the alleged conspirators; and (3) evidence of a high level of inter[party] communications." *Gelboim v. Bank of Am. Corp.*, 823 F.3d 759, 781 (2d Cir. 2016).

Here, Plaintiffs have assembled an abundance of specific factual allegations showing that Defendants' actions bear all the hallmarks of conspiracy that courts look for at the pleading stage. These facts go far beyond mere "labels and conclusions" or "formulaic recitation[s] of the elements of a cause of action." *Twombly*, 550 U.S. at 555. They support the allegation that Defendants engaged in a conspiracy to disseminate information stolen by Russian agents. They are not "merely consistent with" liability, as Defendants claim. Stone Br. 22. Rather, they are paradigmatic of the types of facts that courts look for in order to establish evidence of an illegal agreement: motive to act together, opportunity to reach agreement in the form of repeated communications between the co-conspirators, mutual benefit, and a cover up. Furthermore, many of the actions of Defendants and their co-conspirators are difficult to explain absent a conspiracy.

An inference of conspiracy arises from the following facts, among others: The Trump Campaign assembled a team of staff and advisors with an astonishing number of close and longstanding ties to Russia. Compl. ¶¶ 102-118. Those ties extended to the very top of the Campaign—to Chairman Paul Manafort, *id.* ¶¶ 112-114, 127; to Trump's closest family members and confidants, *id.* ¶¶ 107, 112, 118; and to Mr. Trump himself, *id.* ¶¶ 103-111. Campaign agents and

associates had frequent contact with Russian operatives and with WikiLeaks during the months before the election, much of it occurring before WikiLeaks released the emails on July 22, 2016 (contrary to what Defendants claim, *see* Campaign Br. at 36). *See, e.g.*, Compl. ¶ 89 (describing contact between Trump Campaign and Russian intelligence operatives in late 2015 and early 2016); *id.* ¶ 92 (calls and emails from April to November 2016); *id.* ¶ 95 (meeting of national-security advisory committee on March 31, 2016); *id.* ¶ 96 (April 27, 2016 meeting between Mr. Trump, Mr. Kushner, Mr. Sessions, and Mr. Kislyak); *id.* ¶ 97 (May 2016 meeting between Mr. Manafort and Mr. Kilimnik); *id.* ¶ 98 (June 9, 2016 meeting between Mr. Trump Jr., Mr. Manafort, Mr. Kushner, and Russian operatives); *id.* ¶ 100 (Mr. Page's trip to Moscow in early July 2016); *id.* ¶ 101 (meeting with Mr. Kislyak during the Republican National Convention, on the same day the Trump Campaign inexplicably made changes to the RNC platform favorable to Russia and just days before the DNC emails were dumped on WikiLeaks). While the substance of some of these contacts is unknown at this time, stolen emails and other "dirt" on Mr. Trump's opponent played a central role in at least some of them. *See* Papadopoulos SOO ¶ 14; Compl. ¶¶ 129-133.[10]

Defendants' actions immediately before and after the emails were released also strongly indicate a conspiracy. Mr. Trump and his associates have repeatedly taken steps to benefit Rus-

[10] Plaintiffs have adequately pled that the agreement between Defendants and their co-conspirators encompassed dissemination of the stolen emails. However, Defendants would be liable for that dissemination even in the case of a more general agreement—e.g., for Russia to help elect Trump in exchange for concessions and policy benefits—that did not turn on dissemination of the emails. That is because of the well-established rule that a member of a conspiracy is liable for the tortious acts of his co-conspirators. *See, e.g.*, *Halberstam*, 705 F.2d at 481 ("[O]nce the conspiracy has been formed, all its members are liable for injuries caused by acts pursuant to or in furtherance of the conspiracy. A conspirator need not participate actively in or benefit from the wrongful action in order to be found liable. He need not even have planned or known about the injurious action."); *de Lupis v. Bonino*, No. 07-cv-1372, 2010 WL 1328813, at *10 (D.D.C. Mar. 31, 2010) ("A conspiracy claim spreads liability for a successful tort claim to all parties to the conspiracy regardless of w[h]ether they actually committed the underlying tortious act.").

sia. Compl. ¶¶ 146-159. Mr. Stone communicated with the hacker who claimed credit for the DNC hack, openly bragged about his connections to WikiLeaks and Mr. Assange, and correctly predicted future releases of stolen emails. *Id.* ¶¶ 162-164, 170-178. Rather than condemn Russia for interfering in our election, Mr. Trump and his associates did not hesitate to use the leaked information to their advantage and even called on Russia to engage in further cyberattacks, *id.* ¶¶ 166-169, all while lying repeatedly about their relationships with Russia and contacts with Russian actors, *id.* ¶¶ 183-205; Papadopoulos SOO ¶¶ 1-2; 22-33; Flynn SOO ¶¶ 1-4, and denying that Russia had anything to do with the DNC hack, in the face of overwhelming evidence to the contrary, *id.* ¶¶ 206-216.

Given the facts in the Complaint, the existence of the conspiracy is far more than plausible. Indeed, it explains Defendants' otherwise baffling behavior remarkably well. Courts allow claims of conspiracy to proceed on far less. *See, e.g.*, *Oxbow Carbon*, 81 F. Supp. 3d at 11; *United States ex rel. Sansbury v. LB & B Assocs., Inc.*, 58 F. Supp. 3d 37 (D.D.C. 2014); *Friends Christian High Sch. v. Geneva Fin. Consultants*, 39 F. Supp. 3d 58 (D.D.C. 2014).

2. The pleading of certain facts based on information and belief is appropriate and no basis for dismissal.

Defendants are incorrect to argue that the Complaint cannot survive a motion to dismiss because some of the allegations are pled on information and belief. *See* Stone Br. 23-24; Campaign Br. 35. "The *Twombly* plausibility standard . . . does not prevent a plaintiff from pleading facts alleged upon information and belief where the facts are peculiarly within the possession and control of the defendant, or where the belief is based on factual information that makes the inference of culpability plausible." *Evangelou v. D.C.*, 901 F. Supp. 2d 159, 170 (D.D.C. 2012); *accord Kvech v. Holder*, 2011 WL 4369452, at *3 n.7 (D.D.C. 2011). As Wright & Miller explain:

> [P]ermitting allegations on information and belief is a practical necessity. How else can a pleader avoid the appearance of perjury when he is without direct per-

> sonal knowledge regarding one or more of the allegations necessary to his claim and therefore must plead on a less certain footing? Pleading on information and belief is a desirable and essential expedient when matters that are necessary to complete the statement of a claim are not within the knowledge of the plaintiff but he has sufficient data to justify interposing an allegation on the subject.

Wright & Miller § 1224 (internal citations omitted).

Here, the facts that Plaintiffs plead on information and belief are based on accounts by respected media outlets or can reasonably be inferred from other facts in the Complaint. All such allegations are based on information of the type that is necessarily within Defendants' possession—in particular, details about the conspiracy's formation and implementation, including the content of meetings and communications between Defendants and their co-conspirators.

Defendants seem to argue that Plaintiffs must provide citations to the exact articles, intelligence reports, and other publicly available sources that were relied upon in making claims on information and belief. Plaintiffs could certainly provide this information, but Defendants fail to provide any case law to support such a requirement for pleading on information and belief—and no such requirement exists. Defendants' cases are inapposite. In *Robinson v. Cartinhour*, this Court rejected an allegation pled on information and belief not because the plaintiff failed to identify the specific basis for his belief, but because he "provide[d] scant basis that would 'allow[] the [C]ourt to draw the reasonable inference that [any particular] defendant is liable for the misconduct alleged." 867 F. Supp. 2d 37, 59 n.57 (D.D.C. 2012) (quoting *Iqbal*, 556 U.S. at 678). And *Kowal v. MCI Communications. Corp.*, 16 F.3d 1271 (D.C. Cir. 1994), involved an application of the heightened pleading standard for fraud under Federal Rule of Civil Procedure 9(b). Here, the ordinary Rule 8 pleading standard controls. *See* Wright & Miller § 1224.

3. Plaintiffs have adequately pled a single conspiracy between the named Defendants and other co-conspirators.

Defendants also argue that even if the Complaint adequately sets forth a conspiracy, they

cannot be liable because the Communications Decency Act ("CDA") immunizes WikiLeaks from liability for the acts alleged in the Complaint, Stone Br. 26-27; Campaign Br. 37, and because the intracorporate-conspiracy doctrine eliminates any claim based on conspiracy between Stone and the Campaign, Stone Br. 23; Campaign Br. 37. These arguments rest on the fallacy that Plaintiffs allege the existence of several separate conspiracies. *See* Campaign Br. 34 (describing "four theories of vicarious liability: conspiracy with Russians, conspiracy with WikiLeaks, conspiracy with Roger Stone, and aiding and abetting"). In fact, the Complaint alleges a single conspiracy involving the named Defendants and their co-conspirators. Accordingly, neither the CDA nor the intracorporate-conspiracy doctrine presents a bar to Defendants' liability.

a. The CDA does not immunize Defendants from liability.

Defendants argue that under CDA § 230, 47 U.S.C. § 230, WikiLeaks is immune from liability for the misconduct alleged here and that Defendants therefore could not have conspired with WikiLeaks to commit the alleged unlawful acts. Stone Br. 23; Campaign Br. 37. But even if WikiLeaks could be shielded from liability for the alleged acts in the Complaint,[11] that does not mean that Defendants are also immune. Even if one party to a conspiracy enjoys immunity from suit for a particular action, "[i]t does not follow . . . that the action against the private parties accused of conspiring with the [immune party] must also be dismissed." *Dennis v. Sparks*, 449 U.S. 24, 27 (1980); *see de Lupis v. Bonino*, No. 07-cv-1372, 2010 WL 1328813, at *9 (D.D.C. Mar. 31, 2010) ("Even when a conspiracy claim against an alleged tortfeasor is dismissed, the actions

[11] Plaintiffs do not concede that WikiLeaks would be immune. Whether WikiLeaks would satisfy the CDA test for immunity is a fact-intensive inquiry that likely would turn on whether WikiLeaks played enough of an editorial role with respect to the DNC emails to be considered a content provider rather than just a platform. *See Klayman v. Zuckerberg*, 753 F.3d 1354, 1358-59 (D.C. Cir. 2014). In ruling on a claim against WikiLeaks, a court would "afford a liberal reading to a complaint" and only dismiss if, "on the face of th[e] complaint, all three prongs of [the *Klayman*] test are satisfied." *Id.* at 1357.

of that individual may still be considered in assessing whether a conspiracy claim has been adequately pled."). Even in the context of criminal conspiracy, "[a] conspiracy prosecution may proceed even where the alleged co-conspirators are immune from prosecution." *United States v. Oakar*, 924 F.Supp. 232, 244 (D.D.C. 1996) (stating also that "[i]t is not necessary that any co-conspirator be indicted or found guilty"), *aff'd in part, rev'd in part,* 111 F.3d 146 (D.C. Cir. 1997).[12] Thus, Defendants' plea for immunity from civil liability simply because WikiLeaks might not incur such liability for the underlying acts is misplaced.

b. The intracorporate-conspiracy doctrine does not bar Plaintiffs' conspiracy claim.

Defendants argue that the Campaign and Mr. Stone could not have conspired because Mr. Stone was an agent of the Campaign at certain times during the conspiracy and a corporation cannot conspire with its own employees. *See Exec. Sandwich Shoppe, Inc. v. Carr Realty Corp.*, 749 A.2d 724, 739 (D.C. 2000). This argument fails for four reasons.

First, the D.C. Court of Appeals has not adopted the intracorporate-conspiracy doctrine. *See Blakeney v. O'Donnell*, 117 F. Supp. 3d 6, 15 (D.D.C. 2015); *Rawlings v. Dist. of Columbia*, 820 F. Supp. 2d 92, 104 (D.D.C. 2011).

Second, courts in this Circuit have been hesitant to extend the intracorporate-conspiracy doctrine beyond its original purpose of "shield[ing] corporations and their employees from conspiracy liability for routine, collaborative business decisions that are later alleged to be discriminatory." *Kenley v. Dist. of Columbia*, 83 F. Supp. 3d 20, 33 (D.D.C. 2015). For example, the

[12] The D.C. Circuit has declined to adopt the "rule of consistency" for criminal conspiracy cases, meaning that even the acquittal of all other co-defendants in a conspiracy case does not shield the remaining defendant from liability for the conspiracy in this District. *See United States v. Dakins*, 872 F.2d 1061, 1065–66 (D.C. Cir. 1989). Thus, the possibility that WikiLeaks might be shielded from civil liability for the acts alleged here even while Defendants could be held liable—while arguably an instance of "inconsistency"—would be of far less concern than the "inconsistencies" that this Circuit allows in the context of criminal conspiracy.

D.C. Circuit has reserved judgment on the question of whether the doctrine applies to claims under 42 U.S.C. § 1985, *see Bowie v. Maddox*, 642 F.3d 1122, 1130 (D.C. Cir. 2011), and district courts have declined to apply the doctrine in cases under 42 U.S.C. § 1983, *see*, *e.g.*, *Kenley*, 83 F. Supp. 3d at 33-34. More generally, courts in this District have questioned the doctrine's applicability to cases challenging conduct that "cannot be fairly characterized as involving routine business decisions." *Id.* at 32-33. Conspiring with Russian agents to disseminate information stolen from the DNC cannot be deemed a "routine business decision" of a presidential campaign, and the intracorporate-conspiracy doctrine does not apply.

Third, even if the doctrine applied to situations like this, it would not bar Plaintiffs' conspiracy claim, because Mr. Stone was not a Campaign employee during much of the relevant time. *See* Compl. ¶¶ 6, 41. For the doctrine to apply, "the individual defendants must have been acting within the scope of their shared employment." *Rawlings* 820 F. Supp. 2d at 104.

Fourth, even if Mr. Stone and the Campaign were found to have constituted a single legal entity throughout the entire conspiracy, the doctrine still would not bar Plaintiffs' conspiracy claim, because the Complaint alleges that the conspiracy involved other individuals and entities, including Russians and WikiLeaks. *United States ex rel. Scollick v. Narula*, 215 F. Supp. 3d 26, 44-45 (D.D.C. 2016) (refusing to apply intracorporate-conspiracy doctrine where the alleged conspiracy involved actors other than the corporation and its employee).

4. Aiding and abetting tort liability has been recognized by the D.C. Circuit and has been adequately pled by Plaintiffs.

Defendants address their aiding and abetting arguments to the wrong court. *Halberstam* predicted that the D.C. Court of Appeals would approve of aiding and abetting tort liability. *See* 705 F.2d 472, 479 (D.C. Cir. 1983). "[A]nd in the absence of an opinion from the D.C. Court of Appeals plainly contradicting *Halberstam*, this [C]ourt must apply Circuit precedent." *EIG En-*

ergy Fund XIV, L.P. v. Petroleo Brasileiro S.A., 246 F. Supp. 3d 52, 88 (D.D.C. 2017).

Neither *Sundberg v. TTR Realty, LLC* nor *Flax v. Schertler* contradicts *Halberstam*. *EIG Energy*, 246 F. Supp. 3d at 87-88. All *Flax* holds is that it is *not negligent* for an attorney to fail to raise an aiding and abetting claim. *See* 935 A.2d 1091, 1107-08 (D.C. 2007). And *Sundberg*—which rejects the application of aiding and abetting liability to a statutory cause of action because it was not proper for a court to expand the statute, *see* 109 A.3d 1123, 1129-30 (D.C. 2015)—is inapposite to common-law tort claims that do not rest on statutes in the first place.

Plaintiffs have pleaded the elements of aiding and abetting—that is, that "(1) the party whom the defendant[s] aid[ed] . . . perform[ed] a wrongful act that cause[d] an injury; (2) the defendant[s] [were] generally aware of [their] role as part of an overall illegal or tortious activity at the time that [they] provide[d] the assistance; (3) the defendant[s] . . . knowingly and substantially assist[ed] the principal violation." *Halberstam*, 705 F.2d at 477. Russian intelligence hacked and disseminated emails containing Plaintiffs' private information. At the very least, Defendants had a "general awareness" of their role in the continuing enterprise, thereby satisfying the second element for aiding and abetting. *See id.* at 487-88; Compl. ¶¶ 128-29, 169-81, 224-25, 232-33. Finally, Defendants knowingly provided substantial assistance over a sustained period by (i) incentivizing the Russians to disseminate the information through the promise of a pro-Russian foreign policy, Compl. ¶¶ 138-59, (ii) providing strategic and technical assistance to maximize the public impact of the disclosures, Compl. ¶¶ 119-22, 128-139, 161-65, 169-81, and (iii) helping to cover up the conspiracy, Compl. ¶¶ 182-222, *see Halberstam*, 705 F.2d at 488 (noting duration of activity as well as role in cover-up); *id.* at 482 (explaining that encouraging illegal activity can constitute substantial assistance).

B. This Court should apply D.C. law.

A federal court sitting in diversity applies the choice-of-law rules of the forum in which it

sits. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941). D.C. courts apply "a modified governmental interests analysis which seeks to identify the jurisdiction with the most significant relationship to the dispute." *Washkoviak v. Student Loan Mktg. Ass'n*, 900 A.2d 168, 180 (D.C. 2006). That analysis begins by asking whether there is a choice of law to make—that is, whether the potentially applicable laws differ. *DAG Enters., Inc. v. Exxon Mobil Corp.*, No. 00-cv-182-CKK, 2001 WL 34778782, at *2 (D.D.C. Sept. 30, 2001). If they do, and if more than one jurisdiction has a potential interest in having its law applied, *GEICO v. Fetisoff*, 958 F.2d 1137, 1141 (D.C. Cir. 1992), D.C. courts

> evaluate the governmental policies underlying the applicable laws and determine which jurisdiction's policy would be more advanced by the application of its law to the facts of the case under review . . . . As part of this analysis, [courts] also consider the four factors enumerated in the Restatement (Second) of Conflict of Laws § 145:
>
> > a) the place where the injury occurred;
> > b) the place where the conduct causing the injury occurred;
> > c) the domicile, residence, nationality, place of incorporation and place of business of the parties; and
> > d) the place where the relationship is centered.

Washkoviak, 900 A.2d at 180.

Under this analysis, D.C. law applies. Defendants wrongly argue that "the District has no stake in whether plaintiffs . . . receive redress for the alleged violation of their privacy." Campaign Br. 19. D.C. has a strong interest in preventing people from acting tortiously within its borders and from causing harm within its borders. *See Parnigoni v. St. Columba's Nursery Sch.*, 681 F. Supp. 2d 1, 12-13 (D.D.C. 2010). Imagine if the private information at issue were stolen from a safe, rather than servers, within D.C. Could Defendants seriously argue that D.C. has no interest in the case because the documents belonged to someone from Tennessee? D.C. has an interest in making sure that private information stored within its borders stays private. It has an interest in making sure that people who work in D.C. and whose professional lives are in D.C.

can keep private information private. And D.C.—at least as much as any other jurisdiction in the country—has an interest in ensuring that political organizing within its borders can proceed undeterred by conspiracies to suppress it. D.C. has a strong interest in applying its law to this case.

Of the remaining factors that D.C. courts consider, all but one favors the application of D.C. law: the injury (in part) occurred in D.C., *see supra* Part II.A.2; the Defendants conspired in D.C., *see supra* Part II.A.1; and the relationship between the parties centered on the emails hacked from D.C. Defendants then are left to rest on the fact that, at the time of the suit, they were not domiciled in D.C. That alone is insufficient, and so this Court should apply D.C. law.

Even if D.C. law did not apply, the logical law to apply would be that of Plaintiffs' domiciles—Maryland, Tennessee, or New Jersey—a possibility that Defendants ignore. *See Crane v. Carr*, 814 F.2d 758, 760 (D.C. Cir. 1987); *Pearce v. E.F. Hutton Grp., Inc.*, 664 F. Supp. 1490, 1498 (D.D.C. 1987).[13] Those states also recognize the tort of public disclosure of private facts, so this Court need not make a choice of law among D.C., Maryland, New Jersey, or Tennessee, because the questions relevant to this motion would be decided identically in each jurisdiction. *See, e.g.*, *DAG Enters.*, 2001 WL 34778782, at *2.

Defendants contend that New York law should govern this dispute because the Campaign is permanently headquartered in New York, some of Defendants' conspiratorial meetings took place there, and Stone rents an apartment there. But New York has the weakest claim, as its only plausible interest is in protecting its domiciliaries from liability for revealing private facts. It cannot assert that interest when, as here, the private facts were taken from beyond its borders. New York cannot immunize its domiciliaries from being subject to the laws of other states, as Defendants claim. Finally, even if a balance of the interests of the various states were a close

[13] These cases are not in tension with Plaintiffs' argument that Defendants may be haled into court here because they caused harm here. Defendants *also* caused harm where Plaintiffs live.

call—and it is not—this Court should then apply D.C. law. *See In re APA Assessment Fee Litig.*, 766 F.3d 39, 55 (D.C. Cir. 2014) ("Faced with a conflict between jurisdictions, with neither jurisdiction's law favored by the Restatement factors . . . the law of the forum state govern[s].").

C. The Complaint states plausible claims for public disclosure of private facts.

"The District of Columbia has long recognized the common law tort of invasion of privacy," which "'represents a vindication of the right of private personality and emotional security.'" *Vassiliades v. Garfinckel's, Brooks Bros*., *Miller & Rhoades, Inc.,* 492 A.2d 580, 587 (D.C. 1985). One form of that tort, known as "public disclosure of private facts," provides:

> One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, if the matter published is of a kind that (a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public.

Wolf v. Regardie, 553 A.2d 1213, 1220 (D.C. 1989) (quoting RESTATEMENT (SECOND) OF TORTS ("RESTATEMENT") § 652D). While Defendants may wish that the private-facts tort were "dead" and "waiting only . . . to be formally interred," Campaign Br. 21, it has in fact been accepted in an ever-growing list of jurisdictions that now includes at least forty states.[14] And dispositively, the private-facts tort clearly remains alive and potent in the District of Columbia. *See, e.g., Loumiet v. United States*, 255 F. Supp. 3d 75, 100 (D.D.C. 2017) (holding that complaint alleging disclosure of amount of legal fees charged to client stated plausible private-facts claim).

In a passage of key significance here, the Restatement explains that the private-facts tort protects against the offensive public disclosure of the "intimate details of [one's] life":

> Every individual has some phases of his life and his activities and some facts about himself that he does not expose to the public eye, but keeps entirely to him-

[14] By 2010, forty states had explicitly recognized private-facts claims, and most followed Prosser's conception of the tort as embodied in the Restatement. Jared A. Wilkerson, *Battle for the Disclosure Tort*, 49 CAL. W. L. REV. 231, 266-67 (2013) (observing that courts have "increasingly adopted the tort over time" despite scholarly criticism).

> self or at most reveals only to his family or to close friends. Sexual relations, for example, are normally entirely private matters, as are family quarrels, many unpleasant or disgraceful or humiliating illnesses, most intimate personal letters, most details of a man's life in his home, and some of his past history that he would rather forget. When these intimate details of his life are spread before the public gaze in a manner highly offensive to the ordinary reasonable man, there is an actionable invasion of his privacy, unless the matter is one of legitimate public interest.

RESTATEMENT § 652D, cmt. b.

The private-facts tort implements these privacy concerns by requiring proof of "five constituent elements: (1) publicity, (2) absent any waiver or privilege, (3) given to private facts (4) in which the public has no legitimate concern (5) and which would be highly offensive to a reasonable person of ordinary sensibilities." *Wolf*, 553 A.2d at 1220.

Defendants do not contest the first two but assert that the Complaint fails to adequately allege the third, fourth, and fifth. They are mistaken. As to each element, the Complaint alleges far more than enough to "nudg[e] [Plaintiffs'] claims" of [invasion of privacy] 'across the line from conceivable to plausible.'" *Iqbal*, 556 U.S. at 680 (quoting *Twombly*, 550 U.S. at 570).

1. The Complaint sufficiently alleges that the facts in question were private.

The Complaint sufficiently pleads that the publicity was "given to private facts." *Wolf*, 553 A.2d at 1220. The Complaint alleges in detail that the hacked emails "contain[ed] private facts about Plaintiffs and others, including information regarding sexual orientation, personal health matters, social security numbers, credit cards, personal relationships, banking relationships, home addresses, and telephone numbers." Compl. ¶¶ 228, 236, 246.

More specifically, the Complaint alleges that four types of private fact were publicized:

(1) **Personal-identification information** that Mr. Schoenberg and Mr. Cockrum were required to provide in order to obtain Secret Service clearance to attend an event. That information included Mr. Schoenberg's social security number, date of birth, home address, phone number, and banking relationship, *id.* ¶¶ 8, 18, 50; and Mr. Cockrum's social security number, date of birth, address, and

phone number, *id.* ¶¶ 8, 17, 49;

(2) Facts revealing Mr. Comer's **sexual orientation**, which he had not disclosed to several members of his close-knit family, including his grandparents, because "[he] knew that his grandparents viewed homosexuality as inconsistent with their deeply held religious beliefs," Compl. ¶¶ 5, 19, 51, 69-70;

(3) **Statements regarding personal and professional relationships**, including Mr. Comer's conflicts with coworkers and collaborators, *id.* ¶¶ 19, 43, and his colloquial references to other gay individuals, made to friends without animus or disrespect, which were taken out of context and thus caused him to be falsely labeled as homophobic and racist, *id.* ¶ 73;

(4) Mr. Comer's **health-related information**—in particular, an email graphically describing his physical condition while suffering from an illness, *id.* ¶ 52.

a. Mr. Cockrum's and Mr. Schoenberg's identification information was private.

Defendants assert that Mr. Cockrum's and Mr. Schoenberg's identification information was not private because it was not "embarrassing." Campaign Br. 30; Stone Br. 30-31. They are wrong.[15] "In this age of identity theft and other wrongful conduct through the unauthorized use of electronically-stored data," the D.C. Court of Appeals has had "little difficulty agreeing that conduct giving rise to unauthorized viewing of personal information such as a plaintiff's social security number and other identifying information can constitute an intrusion that is highly offensive to any reasonable person, and may support an action for invasion of privacy (irrespective of whether the plaintiff alleges that economic or other resultant injuries have already come to pass)." *Randolph v. ING Life Ins. & Annuity Co.*, 973 A.2d 702, 710 (D.C. 2009).[16]

[15] Defendants' non-D.C. cases stating that identification information is not private fail to consider the substantial privacy harms from publication of this type of information and, in any event, do not state the law of this jurisdiction. *See* Campaign Br. 30.

[16] *Cf. Danai v. Canal Square Assocs.,* 862 A.2d 395, 400 n.4 (D.C. 2004) (explaining that "examining a plaintiff's private bank account" and "other invasions of that nature" may constitute tortious invasion of privacy); *Wemhoff v. D.C.*, 887 A.2d 1004, 1009 (D.C. 2005) (enforcing statute that prevents DMV from disclosing an individual's social security number, name, address, telephone number, and medical or disability information).

Social security numbers, in particular, are "broadly recognized as confidential information" because they "facilitate access by others to many of our most personal and private records and can enable someone to impersonate us to our embarrassment or financial loss." *Bodah v. Lakeville Motor Express, Inc.*, 649 N.W.2d 859, 862 (Minn. Ct. App. 2002), *rev'd on other grounds,* 663 N.W.2d 550 (Minn. 2003). Accordingly, "[i]n all of the settings where these numbers are available . . . the entities with that information and their employees are bound by contractual and legal constraints to hold our social security numbers in confidence. Given the very sensitive and important nature of the social security numbers, these constraints are important to a functioning society." 649 N.W. 2d at 863. Individuals "have a privacy interest in their home addresses and phone numbers" as well. *Benz v. Washington Newspaper Pub. Co.*, No. 05-cv-1760-EGS, 2006 WL 2844896, at *8 (D.D.C. Sept. 29, 2006).

b. Mr. Comer's sexual orientation was private regardless of his prior disclosures to his parents and to close friends and colleagues.

Facts concerning one's sex life or sexual orientation provide the paradigmatic example of private facts whose unauthorized disclosure gives rise to tort liability. As the Restatement observes, "[e]very individual has some phases of his life and his activities and some facts about himself that he does not expose to the public eye, but keeps entirely to himself or at most reveals only to his family or to close friends. *Sexual relations, for example, are normally entirely private matters*." RESTATEMENT § 652D, cmt. b. The Restatement does not distinguish between heterosexual and same-sex relations—both are private and protected by the private-facts tort.

Disclosure of facts supporting an inference of homosexuality—as occurred here—can give rise to private-facts liability. For example, in *Greenwood v. Taft, Stettinius & Hollister*, 663 N.E.2d 1030 (Ohio Ct. App. 1995), the appeals court reversed the dismissal of a private-facts claim that the plaintiff's employer had improperly disclosed his sexual orientation by sharing,

with persons who had no reason to see it, a form listing the plaintiff's male partner as the beneficiary of his insurance and pension plans.[17] The court reasoned that "[i]t [could] be inferred from this listing that Greenwood is a gay male. If Greenwood had chosen to keep his sexual orientation private, and the firm's alleged disclosure 'outed' him, a reasonable person may well have been offended by this disclosure." *Id*. at 1035.[18]

Defendants assert that the facts concerning Mr. Comer's sexuality are not private because Mr. Comer came out to his parents and certain close friends and colleagues. *See* Compl. ¶ 5; Campaign Br. 28; Stone Br. 29. But private facts do not become public merely because they are shared with family or close colleagues, or in contexts where confidentiality is reasonably expected. After all, "the claim of a right of privacy is not so much one of total secrecy as it is of the right to *define* one's circle of intimacy—to choose who shall see beneath the quotidian mask." *M.G. v. Time Warner, Inc*., 107 Cal. Rptr. 2d 504, 511 (Cal. Ct. App. 2001) (emphasis in original). Accordingly, "[d]isclosing a fact to a small number of confidants does not equate to making the information public." *Stratton v Krywko*, Nos. 248669 & 248676, 2005 WL 27522, at *5 (Mich. Ct. App. 2005) (per curiam); *see* RESTATEMENT § 652D, cmt. b. (private facts include those about sexual relations, that the plaintiff "at most reveals only to his family or to close

[17] *See also Diaz v. Oakland Tribune, Inc*., 188 Cal. Rptr. 762, 766 (Cal. Ct. App. 1983) (liability for publicizing plaintiff's transsexual status); *Simpson v. Burrows*, 90 F. Supp. 2d 1108, 1125 (D. Or. 2000) (tortious to expose plaintiff's sexual orientation in a small community); *Karraker v. Rent-A-Center, Inc.*, 239 F. Supp. 2d 828, 838-39 (C.D. Ill. 2003) (tortious to disseminate confidential profile disclosing plaintiff's sexual orientation); *Foretich v. Lifetime Cable*, 777 F. Supp. 47, 50 (D.D.C. 1991) (denying summary judgment where alleged facts showed that child plaintiff "had what appear to be very intimate details about her personal life"—namely, specific facts about being sexually abused by her father—"broadcast around the globe," and would "have to live for many years with whatever consequences that broadcast may have caused, good or ill").

[18] The defendant in *Greenwood* did not "dispute the fact that sexual orientation is a private fact." *Id*. at 1035.

friends").[19]

An example from the D.C. Court of Appeals confirms that D.C. law allows a plaintiff to define the circle with which to share private personal information. In *Vassiliades*, the plaintiff "offered evidence that, after agonizing over losing her youthful appearance and contemplating plastic surgery for many years, she underwent plastic surgery and kept her surgery secret, telling only family and very intimate friends." 492 A.2d at 587. Her surgeon took photos of her before and after her facelift. She understood that these photographs "were being taken as part of the doctor's regular routine for use with other patients." *Id*. at 585. Months later, however, the surgeon made a presentation in a department store and a related television appearance in which he briefly displayed the photos. Despite the plaintiff's having consented to being photographed in the first place, despite her disclosures about the surgery to family and friends, and despite the fact that *a facelift is the one of the most intentionally public of all medical procedures*—it changes a person's *face*, after all—the D.C. Court of Appeals had no difficulty concluding that the plaintiff "was entitled to expect [that] photographs of her surgery would not be publicized without her consent." *Id*. at 586-87.[20] *Vassiliades* thus demonstrates just how seriously the District of

[19] The Campaign cites *Weiss v. Lehman*, 713 F. Supp. 489, 504 (D.D.C. 1989), for the proposition that "if a plaintiff reveals 'intimate facts' to work colleagues, those facts are no longer private." Campaign Br. 28. But the *Weiss* court merely concluded—after a full bench trial and as a factual matter "determined on a case by case basis"—that the counterclaimant had shared (unspecified) intimate facts about her childhood with real-estate joint-venture co-investors (not "work colleagues") without harboring any "expectation" that the co-investors would "not divulge [the facts] publicly." 713 F. Supp. at 504.

[20] *See also Y.G. v. Jewish Hosp. of St. Louis*, 795 S.W.2d 488, 500, 503 (Mo. Ct. App. E.D. 1990) (holding that attending a gathering of in vitro parents under assurances that it would not be open to the public did not constitute ''an appearance in a public place so as to subject appellants to publicity," as they "clearly chose" to disclose their status only to other attenders); *Zieve v. Hairston*, 598 S.E.2d 25, 30-31 (Ga. Ct. App. 2004) (affirming private-torts verdict where plaintiff told immediate family members about his hair-replacement treatments, which were then publicly revealed by defendant's use of plaintiff's before-and-after photos in advertising); *Multimedia WMAZ, Inc. v. Kubach*, 443 S.E.2d 491, 494 (Ga. Ct. App. 1994) (holding that plaintiff's

Columbia takes the principle that a claim of the right of privacy is "not so much one of total secrecy as it is of the right to *define* one's circle of intimacy." *Time Warner*, 107 Cal. Rptr. 2d at 511, *see also* RESTATEMENT § 652D, cmt. c, illus. 11.

This right to define one's circle of intimacy is most flagrantly and irreparably violated when private facts are disclosed to the entire world, forever, on the Internet—a scenario more extreme than any the American Law Institute (ALI) could have contemplated in 1977 when it described a private fact as being (among other things) one that a person "reveals only to his family or to close friends." RESTATEMENT § 652D, cmt. b.[21] The effect of such a disclosure is at once global and permanent. Before the disclosure, Mr. Comer could choose whether to disclose his sexual orientation to existing or new acquaintances, including work colleagues. But now and for the rest of his life, that information has been placed beyond his control, available to every one of the billions of people around the world with Internet access. It is therefore beyond perverse that the Campaign cites publication on the Internet as a ground for *dismissing* Mr. Comer's private-facts claim. Campaign Br. 25 (calling the Internet "the modern equivalent of a street").

Understanding the right protected by the public disclosure tort as a right to define one's own circle of intimacy also makes clear the flaw in Defendants' argument that homosexuality is now so universally accepted that being gay is no longer a private fact. Campaign Br. 29; Stone

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AIDS status did not become public merely because he disclosed it to family, friends, medical personnel, and members of his support group, where defendant's unauthorized disclosure then spread that information to an entire urban television viewing area); *Doe v. City of N.Y.*, 15 F.3d 264, 269 (2d Cir. 1994) (holding that plaintiff adequately alleged private facts by alleging that he signed agreement with city agency settling AIDS-discrimination claims while under the belief that the parties and the agency had agreed to protect his identity).

[21] In 1977, the ALI's vision of worst-case tortious scenarios included "publication in a newspaper or a magazine . . . or in a handbill distributed to a large number of persons, or any broadcast over the radio, or statement made in an address to a large audience." RESTATEMENT § 652D, cmt. a. The global distribution and permanent availability of the WikiLeaks dump at issue here makes the present scenario infinitely more damaging.

Br. 30. Defendants fail to cite a single private-facts case that supports that argument. Instead, they cite two defamation decisions stating that a false ascription of homosexuality can no longer be regarded as "libelous *per se*"—*i.e.*, so obviously harmful to reputation that the law will presume damage. Campaign Br. 29 (citing *Albright v. Morton*, 321 F. Supp. 2d 130, 138 (D. Mass. 2004), *aff'd on other grounds*, 410 F.3d 69 (1st Cir. 2005); and *Yonaty v. Mincolla*, 945 N.Y.S2d 774 (N.Y. App. Div. 2012)). That proposition is doubly irrelevant. First, even if publicizing a person's sexuality is not defamatory *per se*, it can be damaging in particular cases: Mr. Comer seeks the opportunity to prove his damages, not a ruling that he is automatically damaged as a matter of law. Second, the issue here is whether information about an individual's sex life (including sexual orientation) is *private*, not whether a false ascription of homosexuality is defamatory. A fact is private if it is one that a person "does not expose to the public eye." *See* RESTATEMENT § 652D, cmt. b. For many people, sexual orientation is just such a fact, and unremarkably so. After all, the category of private facts normally and paradigmatically includes information about an individual's sex life *regardless of sexual orientation*. *See* RESTATEMENT § 652D, cmt. b. A court in this District has held, for example, that private-facts liability can arise from disclosure of a straight woman's dating relationships. *See Benz*, 2006 WL 2844896, at *7.

By contrast, a false statement is libelous *per se* only if its publication would expose a person to "public hatred, shame, obloquy, contumely, odium, contempt, ridicule, aversion, ostracism, degradation or disgrace, or to induce an evil opinion of [a person] in the minds of right-thinking persons." *Yonaty,* 945 N.Y.S.2d at 776. Heterosexual dating relationships, like same-sex ones, are neither shameful nor disgraceful—but they are private. No case restricts private-facts liability to the small and extreme category of statements that constitute libel *per se*.

Defendants also cite the allegation that, shortly before the first WikiLeaks dump, Mr.

Comer was named the DNC's LGBT Finance Chair. Compl. ¶ 34. But not all fundraisers who work with the gay community are themselves gay. And the Complaint does not allege (1) whether or to whom Mr. Comer publicized his new responsibility, (2) that his grandparents knew that he had become LGBT Finance Chair, or (3) that his grandparents even knew what "LGBT" meant. Factual questions like these cannot be resolved on a motion to dismiss.

Finally, Mr. Stone argues that facts suggesting Mr. Comer's sexual orientation were not private because they were contained in work emails in which he had no reasonable expectation of privacy. Stone Br. 31. But Mr. Stone relies on inapposite cases concerning an employee's expectation of privacy vis-a-vis his employer—not vis-a-vis a completely unauthorized third party.

c. Mr. Comer's statements about his personal and business relationships were private.

Private communication about an interoffice quarrel or interoffice gossip is also within the scope of the public disclosure of private facts tort. A provision of the federal Privacy Act of 1974, 5 U.S.C. § 552a(b), provides a useful analogy, as it was "designed to prevent [disclosure of] the office gossip [and] interoffice and interbureau leaks of information about persons of interest in the agency or community, or such actions as the publicizing of information of a sensational or salacious nature or . . . detrimental to character or reputation." *Pippinger v. Rubin*, 129 F.3d 519, 529 (10th Cir. 1997) (quoting legislative history). Few among us would wish to see their least charitable remark about a work colleague splashed across the Internet. The potential to ruin work relationships and suffer a catastrophic career setback is clear. That is in fact what happened to Mr. Comer. *See* Compl. ¶¶ 72-74.

d. Mr. Comer's embarrassing health-related information was private.

The Restatement recognizes that facts about "disgraceful or humiliating illnesses" are private and fall within the scope of the private-facts tort. RESTATEMENT § 652D, cmt. b. Indeed,

"there are few matters that are quite so personal as the status of one's health, and few matters the dissemination of which one would prefer to maintain greater control over." *Doe v. City of New York*, 15 F.3d 264, 267 (2d Cir. 1994). Thus, Mr. Comer's graphic and embarrassing description of his illness while at work was private.

2. The Complaint sufficiently alleges that the private facts were not matters of legitimate public concern.

Plaintiffs also adequately allege that the disclosed facts are ones "in which the public has no legitimate concern." *Wolf*, 553 A.2d at 1220. This element reflects the principle that "[t]he conflict between the public's right to information and the individual's right to privacy requires a balancing of the competing interests. In D.C. the right of privacy stands on a high ground, cognate to the values and concerns protected by constitutional guarantees." *Vassiliades*, 492 A.2d at 589.

Here, that balance tilts decidedly in favor of privacy. The Complaint alleges that "[n]one of the private information about Plaintiffs . . . that was disclosed was newsworthy or involved any public policy matter at issue in the campaign." Compl. ¶ 21; *see also id.* ¶¶ 55-59, 227. As a matter of law, and in light of the other facts pleaded, that allegation is both sufficient and well supported. None of the Plaintiffs is a public figure. And even if Plaintiffs were public figures, "the privilege to publicize matters of legitimate public interest is not absolute. . . . Certain private facts about a person should never be publicized, even if the facts concern matters which are, or relate to persons who are, of legitimate public interest." *Vassiliades*, 492 A.2d at 589.

Defendants argue at length about whether other information revealed through the conspiracy was newsworthy. But they cannot prevail on this element by articulating a general connection between the private facts that they conspired to publicize and some broader issue of possible public concern—for instance, the public's interest in understanding the inner workings of

the Democratic Party. *See* Campaign Br. 24-26. Instead, there must be a connection between the substance of the fact publicized and the matter on which the public has a right to be informed. *Gilbert v. Med. Econ. Co.*, 665 F.2d 305, 308 (10th Cir. 1981). "[T]o properly balance freedom of the press against the right of privacy, *every private fact disclosed* in an otherwise truthful, newsworthy publication must have some *substantial relevance* to a matter of legitimate public interest." *Id.* In *Vassiliades*, for example, the D.C. Court of Appeals held that, although plastic surgery in general may be a matter of legitimate public interest, there was no "logical nexus" between that subject and the defendant surgeon's unauthorized public disclosure of "before and after" photos of *the plaintiff's* plastic surgery. "Publication of her photographs [strengthened neither] the impact nor the credibility of the [surgeon's public] presentations nor otherwise enhanced the public's general awareness of the issues and facts concerning plastic surgery. . . . [Those] presentations could have been just as informative by using either photographs of other patients or photographs from medical textbooks." 492 A.2d at 589-90.[22] The court concluded that "[t]he 'logical nexus' that courts have relied upon in determining that no liability exists where a matter of legitimate public interest is concerned—here, the nexus between the subject matter and Mrs. Vassiliades' photographs—is missing." *Id*. at 590; *see Stratton*, 2005 WL 27522, at *7.

Here, likewise, no discussion of the election or any other public issue could have been made more credible or informative by the disclosure of (1) Mr. Comer's sexual orientation, health issues, or squabbles with colleagues, or (2) Mr. Cockrum's and Mr. Schoenberg's personal-identification information. As in *Vassiliades*, the requisite "logical nexus" is missing.

[22] *See Foretich*, 777 F. Supp. at 50 ("The Court acknowledges that the sexual abuse of children is an issue worthy of public attention, but it does not believe, as a matter of law, that the specific facts about the alleged abuse of *this one particular child* . . . as described by the child on the videotape in question are of legitimate public concern."); *Hawkins v. Multimedia, Inc.*, 344 S.E.2d 145, 146 (S.C. 1986) (holding that jury could find teenage father's specific identity private even though report on teenage pregnancies was newsworthy).

The Campaign cites three inapposite and out-of-jurisdiction cases to argue that judges should not second-guess fine-grained editorial judgments about the importance of a private fact to establishing the credibility of a journalistic work, and likewise should not impose such exacting "nexus" requirements that a journalistic story is delayed until it is no longer newsworthy. Campaign Br. 23. Even if these cases governed in this jurisdiction, they would not be on point. For example, *Alvarado* involved the publication of the identities of two police officers accused of sexual assault. *See* 493 F.3d at 1220-21. Whatever the wisdom of the publication of that information, there is an obvious logical nexus between the news story and the published information.

Moreover, the concern with second-guessing the editorial judgments of journalists who are carefully sifting information or crafting narratives for the public has nothing to do with Defendants' conduct. Defendants were not exercising editorial care. They simply participated in a conspiracy to dump tens of thousands of private emails onto the Internet. Indeed, they (mistakenly) assert non-liability on the claim that they did not review the emails at all. Campaign Br. 27; Stone Br. 28; *see infra* Part III.C.4. Even now, they cannot articulate a logical nexus between the disclosed private facts and some other matter that could excuse the conduct of the conspiracy. And the case they cite for their undue-delay point cautions that publishers "should take precautions to avoid unwarranted public disclosure and embarrassment of innocent individuals who may be involved in otherwise newsworthy events of legitimate public interest"—precautions the Defendants never took. *Star-Telegram, Inc. v. Doe*, 915 S.W.2d 471, 474 (Tex. 1995).

Defendants' public-concern arguments boil down to the contention that if an email account belonging to a person who is not a public figure contains a few emails that are relevant to the public, then there can be no liability for the unauthorized release of the contents of the *entire*

account. But that is not the law. If accepted, Defendants' arguments would defy the protection offered by D.C. privacy law and create perverse incentives to engage in large-scale political espionage during important elections. Defendants assert that no private-facts liability can arise because the emails (1) were work emails sent or received by political operatives during a presidential campaign, (2) concerned the inner workings and the donor and media relationships of the Democratic Party, (3) were published just before the Democratic National Convention, (4) were published on the Internet, (5) were motivated by the desire to help the Trump Campaign and harm the Clinton Campaign, and (6) "made headlines." Campaign Br. 24-26. But these characterizations are not relevant to the question of whether Plaintiffs' private information was worthy of public disclosure. In fact, Plaintiffs' private information did not make headlines and was of no legitimate interest to the public. Defendants conspired to dump thousands of stolen emails on the Internet. A rule that immunized them from liability because a small portion of those emails contained information of arguable public concern would simply encourage future privacy-violators to violate as many people's privacy as possible: if you dump an enormous amount of information, surely something in there will be of public concern. In an Internet-based world, such a rule offers little protection for privacy at all, and it is not the law in this District.

3. The Complaint sufficiently alleges that publication of the private facts would have been highly offensive to a reasonable person of ordinary sensibilities.

Plaintiffs also meet the fifth element of the private-facts tort: the improper disclosures "would be highly offensive to a reasonable person of ordinary sensibilities." *Wolf*, 553 A.2d at 1220. The "highly offensive" standard is easier to meet than the outrageousness standard for awarding punitive damages or for finding liability for intentional infliction of emotional distress.

See Vassiliades, 492 A.2d at 588, 593.[23]

When evaluating offensiveness, "[t]he protection afforded to the plaintiff's interest in his privacy must be [judged] relative to the customs of the time and place, to the occupation of the plaintiff and to the habits of his neighbors and fellow citizens." RESTATEMENT § 652D, cmt. c. Accordingly, the issue whether the disclosure was "highly offensive to a reasonable person" is "a factual question usually given to the jury to determine." *Vassiliades*, 492 A.2d at 588; *see also Wolf*, 553 A.2d at 1219 (offensiveness of privacy invasion "is usually the province of the jury"). Rarely, if ever, will this be an issue capable of being determined on a motion to dismiss.

Any reasonable person would find it highly offensive to learn that his private communications were disclosed to the world through the collaboration of an American presidential campaign and a hostile foreign power. Even without that context, the disclosures meet the "highly offensive" standard due to their personal nature. "'[H]ighly offensive' matters generally relate to the intimate details of a person's life, sexual relations, and other personal matters." *Paige v. U.S. Drug Enf't Admin.*, 818 F. Supp. 2d 4, 17 (D.D.C. 2010) (applying cognate Florida law), *aff'd*, 665 F.3d 1355 (D.C. Cir. 2012).[24] Thus, disclosure of sexual orientation potentially satisfies the requirement of offending a reasonable person.[25] Likewise, the "unauthorized viewing of personal information such as a plaintiff's social security number and other identifying information can constitute an intrusion that is highly offensive to any reasonable person, and may support an ac-

[23] Under D.C. law, the outrageousness necessary to prove intentional infliction of emotional distress is sufficiently elevated that it automatically opens the door to punitive damages. *See Sere v. Grp. Hospitalization, Inc.*, 443 A.2d 33, 37-38 (D.C. 1982); *see Oliver v. Mustafa*, 929 A.2d 873, 878 n.2 (D.C. 2007) (same). Plaintiffs believe that heightened standard is satisfied in this case.

[24] *See Benz*, 2006 WL 2844896, at *7 (holding that publication in widely distributed newspaper of names of people whom plaintiff had dated and with whom she had had sexual relations could cause "suffering, shame or humiliation to a person of ordinary sensibilities").

[25] *See, e.g., Greenwood*, 663 N.E.2d at 1035; *Simpson*, 90 F. Supp. 2d at 1125; *Karraker*, 239 F. Supp. 2d at 838-39.

tion for invasion of privacy (irrespective of whether the plaintiff alleges that economic or other resultant injuries have already come to pass)." *Randolph*, 973 A.2d at 710.[26] And the disclosure of home addresses and phone numbers may be highly offensive, depending on the factual context. *Benz*, 2006 WL 2844896, at *8. Here, where those disclosures allegedly facilitated identity theft, the offense is quite real and legally cognizable.

4. The private-facts tort does not require proof that Defendants specifically intended to disclose Plaintiffs' private facts.

Defendants erroneously assert that the private-facts tort contains a specific-intent element that, as applied here, would require proof that Defendants committed their wrongful acts with *actual knowledge* that the massive data dump of hacked DNC emails contained the *specific* private facts at issue in this lawsuit. Campaign Br. 27; Stone Br. 28. This intent element would effectively exempt mass disclosures of private communications from liability as long as the defendant refrained from reading any individual communication.

Fortunately, no such requirement exists. The sole case cited by Defendants held only that "'[t]he tort [of invasion of privacy] cannot be committed by unintended conduct amounting merely to lack of due care.'" *Randolph*, 973 A.2d at 711 (brackets in original). The harm the Plaintiffs suffered did not come about through "unintended conduct." If Defendants had accidentally dumped private emails on the internet by mistakenly hitting the wrong keys on their computer keyboards, they would have a defense. But that is not what happened. Defendants' conspiratorial actions were entirely purposeful.

Defendants likewise fail to cite any case supporting their contention that the First

[26] *See also Bodah*, 649 N.W.2d at 862-63; *Lambert v. Hartmann*, 898 N.E.2d 67, 73-74 (Ohio App. 2008) (per curiam) (reversing dismissal of private-facts claim and holding that county clerk's website publication of traffic ticket showing plaintiff's name, signature, home address, birth date, driver's license number, and social security number met all elements of the tort), *rev'd on other grounds*, 927 N.E.2d 585 (Ohio 2010).

Amendment imposes the same specific-intent requirement. First Amendment protection is "baked into" the private-facts tort by operation of its public-concern (or "lack of newsworthiness") element, which balances the right of privacy against the public's right to information. No case holds that this built-in protection is constitutionally inadequate.

D. The Complaint states plausible claims for intentional infliction of emotional distress.

The Complaint contains sufficient allegations as to the elements of the intentional infliction tort, as set forth in the proposed D.C. standard jury instruction:

> (1) that Defendant engaged in conduct that was extreme and outrageous;
>
> (2) that Defendant intended to cause Plaintiff emotional distress; or that Defendant acted with reckless disregard of whether the conduct would cause Plaintiff to suffer emotional distress; and
>
> (3) that Defendant's conduct caused Plaintiff to suffer severe emotional distress.
>
> . . . In order for you to find Defendant's conduct to be extreme and outrageous, you must find that conduct to be so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency and to be regarded as atrocious and intolerable in a civilized society.

Standardized Civil Jury Instructions for the District of Columbia ("D.C. Instructions") § 25.05.

1. The Complaint sufficiently alleges that defendants' alleged conduct was extreme and outrageous.

According to the Restatement, "extreme" connotes unusualness while "outrageous" connotes malice or turpitude. RESTATEMENT (THIRD) OF TORTS ("RESTATEMENT THIRD") § 46, cmt. d (2012). "The fact that an act is unlawful," though not dispositive, "is relevant in determining whether it is an actionable transgression for purposes of" emotional-distress liability. *Clemente v. State*, 206 P.3d 249, 255 n.3 (Or. 2009).

Here, Defendants conspired with Russian agents and others to undermine an election and the very foundation of our democracy—conduct that is surely malicious and highly unusual, and

that would rightfully arouse shock and outrage against Defendants in the District of Columbia. The Complaint alleges that "[t]he conduct of Defendants and their co-conspirators was extreme, outrageous, and beyond the bounds of decency." Compl. ¶ 237. That general allegation is supported by numerous detailed paragraphs setting forth that:

- In order to influence the 2016 presidential election, Defendants agreed with each other and with other parties, including Russian government officials and WikiLeaks, to publicly disclose on the Internet private email communications that were stolen, or hacked, from a political party. *Id.* ¶¶ 79–80, 88–139, 160–181, 220, 232.

- In furtherance of that conspiracy, one or more co-conspirators published on the Internet tens of thousands of hacked emails. The emails were published without the slightest effort to curate or redact them to remove Plaintiffs' private facts. Instead, the published emails contained private facts about sexual orientation, personal health, social security numbers, credit cards, personal relationships, banking relationships, home addresses, and telephone numbers. *Id.* ¶¶ 17–19, 42–45, 47, 228, 236.

In response, Defendants object that it cannot be outrageous to publish stolen private communications if Ben Franklin and Sam Adams did the same thing in 1773. Campaign Br. 32. That is not a strong argument. Sam Adams destroyed a lot of privately owned tea, and destruction of property is still a harm compensable in tort. The Founding Fathers also conspired to overthrow the then-existing government by force, but that would not be a useful precedent for anyone to cite today. Mr. Trump has made clear that he is not troubled by the Russian interference in the 2016 election. But there should be no doubt that conspiring with a hostile foreign power to make public Americans' private emails in order to tilt an election is a great outrage, especially to Plaintiffs and other Americans who were directly affected.

Equally unavailing is Defendants' argument that the emotional-distress tort cannot be used to evade the public-concern (or "lack of newsworthiness") element of the private-facts tort. *Id.* at 31. That argument fails because the Complaint satisfies that element, as demonstrated above in Part III.C.2. As explained there, the Complaint's allegations demonstrate the absence of

any "logical nexus" between the wrongful disclosures and matters of legitimate public concern.

2. The Complaint sufficiently alleges that Defendants acted with reckless disregard as to whether their conduct would cause emotional distress.

Defendants argue that the complaint fails to state an emotional-distress cause of action because the plaintiffs were only "collateral victim[s]," and not the directly intended targets, of their conspiracy. Campaign Br. 32. But the emotional-distress tort merely requires proof of *recklessness*—a standard easily met by the mass disclosure of private communications, regardless of whether Plaintiffs were specifically targeted. An actor "acts *recklessly* when the actor knows of the risk of severe emotional harm (or knows facts that make the risk obvious) and fails to take a precaution that would eliminate or reduce the risk even though the burden is slight relative to the magnitude of the risk, thereby demonstrating the actor's indifference." RESTATEMENT THIRD § 46, cmt. h.

The Complaint alleges that "Defendants and their co-conspirators knew that the hacked DNC emails were private and intended to publicly disclose the private emails." Compl. ¶¶ 226, 234, 244. Yet the emails published to the entire world on the Internet were not redacted to remove private facts about Plaintiffs. *Id.* ¶ 47. Thus, "Defendants and their co-conspirators knew, were plainly indifferent to the fact, or consciously disregarded the foreseeable risk that the hacked DNC emails contained private facts about Plaintiffs and other individuals similarly situated, and that publication of the emails would cause Plaintiffs and others severe or extreme emotional distress." *Id.* ¶ 235. These allegations easily meet the recklessness standard.

Moreover, Defendants' intent to harm Mr. Comer is clear: he and the DNC Finance Office "were singled out for publication" for the purpose of "intimidat[ing] and deter[ring] existing donors from further supporting the DNC's financial efforts." Compl. ¶¶ 16, 34; *see id.* ¶ 45. WikiLeaks specifically boasted that it had disclosed 3,095 of his emails on July 22, 2016. *Id.* ¶ 42.

The fact that Defendants' conduct may not have been specifically "directed at" Mr. Cockrum or Mr. Schoenberg in no way undermines the plausibility of the allegation that Defendants behaved *at least* recklessly toward them. As donors to the DNC, they were part of a class of intended targets whom Defendants intentionally sought to "put . . . on notice that their support and advocacy could expose them to the release of their private information." Compl. ¶ 181; *see also id.* ¶¶ 16-17, 45. And the mass dumping of private communications onto the Internet was like shooting an arrow at random into a crowd. Even if not "directed at" a specific individual, the arrow (or here the disclosures) were sure to result in harm to someone in the crowd—in this case, to many in that crowd.[27] "[A]dhering to a 'directed at' requirement in such cases would largely nullify the recklessness element of this Section." RESTATEMENT THIRD § 46, cmt. i, illus. 7.

3. The Complaint sufficiently alleges that the Plaintiffs suffered severe emotional distress.

"'Emotional harm' means impairment or injury to a person's emotional tranquility." RESTATEMENT THIRD § 45. "Emotional harm encompasses a variety of mental states, including fright, fear, sadness, sorrow, despondency, anxiety, humiliation, depression (and other mental illnesses), and a host of other detrimental—from mildly unpleasant to disabling—mental conditions." *Id*., cmt. a. "[T]he existence . . . and severity of emotional harm is ordinarily dependent on self-reporting." *Id*. "Severe harm must be proved, but in many cases the extreme and outrageous character of the defendant's conduct is itself important evidence bearing on whether the requisite degree of harm resulted." *Id*., § 46, cmt. j.

[27] Defendants' "directed at" argument garners no support from *Bettis v. Islamic Republic of Iran*, 315 F.3d 325 (D.C. Cir. 2003), which held that the siblings of a priest abducted and tortured by state-sponsored terrorists *were* entitled to an emotional-distress recovery, but that his nieces and nephews were not. *Bettis* did not concern directness of *intent*, but directness of *harm*. The kidnapers did not *directly harm* the nieces and nephews, who were neither abducted nor tortured. Here, Defendants *directly harmed* Plaintiffs by participating in a conspiracy that resulted in the disclosure of *Plaintiffs'* information.

Here, the Complaint specifically alleges that each of the plaintiffs suffered severe emotional distress that may not abate for the rest of their lives. Mr. Comer was "outed" to his conservative religious grandparents, testing their previously close relationship. Compl. ¶¶ 51, 69-70. He also lost a long-term romantic relationship. *Id.* ¶ 71. He became marginalized and isolated at work; saw a major event that he had eagerly anticipated organizing taken away from him and given to other staff; and ultimately felt compelled to leave his job. *Id.* ¶¶ 72, 74. He suffered harm to his reputation due to press reports calling him homophobic and racist. *Id.* ¶ 73. He received as many as 20 harassing phone calls per day for weeks after the publication. Many callers threatened violence and used vile language, making him feel like a pariah. *Id.* ¶ 75. As a result of all this, Mr. Comer experienced significant emotional distress, including anxiety and depression. He incurred and continues to incur substantial medical expenses to treat the distress caused by Defendants and their co-conspirators. *Id.* ¶ 77.

Mr. Cockrum received and continues to receive notices of strangers attempting to obtain credit in his name, some successfully. *Id.* ¶ 62. He feared identity theft—and worse—so he directed his personal assistant to take extra precautions when admitting visitors to his office and speaking with strangers on the phone. *Id.* ¶ 63. He continues to experience anxiety over actual and potential identity theft, and especially the ability of sophisticated hackers to gain access to his personal or business financial accounts. He feels that protecting himself, his family, and his philanthropy will require extreme vigilance with no end in sight. *Id.* ¶ 64.

Mr. Schoenberg received phone calls and letters about fraudulent credit applications in his and his wife's names. One application resulted in the issuance of a credit card on a new account shared between his wife and a stranger. *Id.* ¶ 66. Mr. Schoenberg has spent countless hours speaking with creditors and with other financial and reporting institutions to rectify the problems

caused by the disclosure of his social security number *Id.* ¶ 67. He continues to experience anxiety and fear over potential future identity theft, especially the ability of sophisticated hackers to gain access to his financial accounts using personally identifying information that is now readily available online. He fears that these risks will never go away. *Id.* ¶ 68.

E. D.C. tort laws protecting privacy are not unconstitutional.

On spurious constitutional grounds, the Trump Campaign asks this Court to expunge the private-facts tort from American law and to severely limit the emotional distress tort. Campaign Br. 39-41. The Trump Campaign may wish to be able to indiscriminately make public highly private information about its opponents and to inflict emotional damage by doing so. But the Campaign's attack on these long-accepted torts has no basis in law.

1. The torts do not violate the First Amendment.

The Campaign contends that the private-facts tort violates the First Amendment *in all cases*—regardless of how pleaded or applied in any given case—because the tort limits offensive and outrageous speech (among other things). *Id.* at 39-40. The Campaign urges the Court to view this as a content-based restriction on speech. Of course it is not.

By any recognized measure, the torts at issue here are content-neutral. Neither targets any specific viewpoint either overtly or implicitly. Each is justified by state interests "unrelated to the content of" the defendant's speech. *Hill v. Colorado*, 530 U.S. 703, 719-20 (2000). The private-facts tort protects against the offensive public disclosure of the "intimate details of [one's] life" and reflects no governmental viewpoint on the content of those details. RESTATEMENT § 652D, cmt. b. For example, facts about one's sex life are not protected from disclosure because the government either favors sex and wants to promote it or disapproves of sex and wants to suppress discussion of it. Rather, such facts are protected from disclosure because every person has a recognized interest in defining her own "circle of intimacy"—the small group of people with

whom she shares her most personal confidences. *See Time Warner*, 107 Cal. Rptr. 2d at 511. Likewise, the emotional-distress tort enforces no governmental viewpoint on any specific issue. Instead, the tort protects against outrageous conduct that inflicts severe psychological harm on another—and it does so without regard to the specific "viewpoint" being expressed.

The Campaign also asserts that the torts violate the First Amendment because they punish truthful speech. But the First Amendment creates no general immunity for speech that is truthful: much of securities law, for example, is precisely about restricting truthful speech. And when ruling in privacy cases, the Supreme Court repeatedly has declined any "invitation to hold broadly that truthful publication may never be punished consistent with the First Amendment." *The Florida Star v. B.J.F.*, 491 U.S. 524, 532 (1989). Instead, "[r]especting the fact that press freedom and privacy rights are both 'plainly rooted in the traditions and significant concerns of our society,'" the Court has "rel[ied] on limited principles that sweep no more broadly than the appropriate context of the instant case." *Id.* at 533. By contrast, the Campaign's sweeping theory, taken to its logical conclusion, would vitiate the right to privacy. Any intimate detail shared in a private email, letter, or video could be published to the world with impunity under the shield of the First Amendment, as long as the information contained therein was "truthful." That is not the law.

Moreover, the private-facts and emotional-distress torts take due account of the public interest in truthful speech. No private-facts claim will lie for the disclosure of facts that are of legitimate public concern. *See Wolf*, 553 A.2d at 1220. The tort's public-concern element involves "a balancing of the competing interests" of "the individual's right to privacy" and "the public's right to information." *Vassiliades*, 492 A.2d at 589. The Campaign makes no showing that the inquiry required by the public-concern element is less rigorous than what the First Amendment requires. The emotional-distress tort likewise targets only conduct "so outrageous" and "ex-

treme" as to be "regarded as atrocious and intolerable in a civilized society." D.C. Instructions § 25.05. The First Amendment properly demands that our society have a broad tolerance for unpleasant speech, but it does not mean that every atrocious utterance is protected.

The Campaign again invites error when arguing that these long-established torts are subject to strict scrutiny. As the D.C. Circuit has observed, strict scrutiny generally applies only to limitations on speech regarding matters of public concern. *See Trans Union Corp. v. FTC*, 267 F.3d 1138, 1140-41 (D.C. Cir. 2001). But the public-concern element of the private-facts tort and the extreme-and-outrageous requirement of the emotional-distress tort ensure that those torts will *not* infringe upon speech of public concern.

2. The torts are not void for vagueness

The Campaign asserts that the private-facts and emotional-distress torts are void for vagueness in all cases and applications because their elements feature terms that lack mathematical precision—*e.g.*, "highly offensive" and "outrageous." Campaign Br. 40-41. But tort law routinely uses terms of this sort. So it is not surprising that no relevant precedent supports this argument. *Miller v. California*, 413 U.S. 15 (1973), cited by the Campaign, is easily distinguishable. The *Miller* majority never mentioned vagueness; and in any event, *Miller* involved a criminal statute. The Supreme Court has "expressed greater tolerance of [putatively vague] enactments with civil and no criminal penalties because the consequences of imprecision are qualitatively less severe." *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498–99 (1982). In fact, the majority of the cases that the Campaign cites in support of this argument involved criminal statutes,[28] and the civil cases are also distinguishable.[29]

[28] *See Coates v. Cincinnati*, 402 U.S. 611, 616 (1971); *Godfrey v. Georgia*, 446 U.S. 420, 428-29 (1980); *Reno v. ACLU*, 521 U.S. 844, 873 (1997); *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

In the civil sphere, "regulations will be found to satisfy due process so long as they are sufficiently specific that a reasonably prudent person, familiar with the conditions the regulations are meant to address and the objectives the regulations are meant to achieve, would have fair warning of what the regulations require." *United States Telecomm. Ass'n v. FCC*, 825 F.3d 674, 736 (D.C. Cir. 2016). The longstanding torts at issue in this case satisfy that test.

If accepted, the Campaign's vagueness theory would invalidate a vast range of common-law and statutory remedies that employ necessarily imprecise standards such as reasonableness, materiality, and offensiveness as opposed to bright-line rules or mathematical quantities. That theory would blast a giant hole in the web of civil protections that historically have protected Americans against wrongdoing, and it must be rejected.

F. The Complaint states plausible claims that Defendants violated 42 U.S.C. § 1985(3).

The support-and-advocacy clauses of 42 U.S.C. § 1985(3)[30] seek to protect the integrity

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[29] *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988), involved a magazine cover featuring a parody of a Campari Liqueur advertisement that displayed the plaintiff's name and picture and was entitled "Jerry Falwell talks about his first time." *Id*. at 48. There, the Supreme Court held that "public figures and public officials may not recover for the tort of intentional infliction of emotional distress by reason of publications such as the one at issue here." *Id*. at 56. Plaintiffs here were neither public figures nor public officials. *Fox Television*, 567 U.S. at 253–54, held that broadcasters did not have "sufficient notice of what is prescribed" by a new FCC policy that was applied to them retroactively. *Id*. at 254. By contrast, the torts at issue here have been recognized for decades and Defendants cannot claim any surprise.

[30] 42 U.S.C. § 1985(3) reads as follows, with the bracketed numerals added and the most relevant portions in bold text:

> If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another,
>
> > [1] for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or
> >
> > [2] for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or

of federal elections. Plaintiffs seek damages for injuries they suffered due to actions that Defendants took as part of a conspiracy made actionable under those clauses. Defendants' half-dozen objections to Plaintiffs' § 1985(3) claims lack merit.

1. Plaintiffs need not allege state action.

The Supreme Court has made clear that § 1985(3) reaches private conspiracies as well as conspiracies involving state actors. *See Griffin v. Breckenridge*, 403 U.S. 88, 101 (1971); *see also* Stone Br. 33 (acknowledging that § 1985(3) provides "a cause of action for damages caused by purely private conspiracies"). Defendants argue nonetheless that Plaintiffs' particular claim must allege state action. Their specific contention is that claims under the support-and-advocacy clauses are assertions of First Amendment rights, and First Amendment violations require state action. *See* Stone Br. 33-34; Campaign Br. 42.

Defendants are wrong. Claims under the support-and-advocacy clauses are not simply assertions of First Amendment rights. They are freestanding statutory claims, and the statutory clauses under which they arise have no state-action requirement. Defendants' contrary view fails to differentiate among the separate clauses of § 1985(3). It also misreads the case law.

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if two or more persons conspire

> **[3] to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or**
>
> **[4] to injure any citizen in person or property on account of such support or advocacy;**

in any case of conspiracy set forth in this section, **if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property**, or deprived of having and exercising any right or privilege of a citizen of the United States, **the party so injured or deprived may have an action for the recovery of damages** occasioned by such injury or deprivation, against any one or more of the conspirators.

The first half of § 1985(3) contains four clauses specifying different kinds of actionable conspiracies. Clause (1) covers conspiracies to deny equal protection or equal privileges and immunities. Clause (2) covers conspiracies to hinder authorities in their attempts to enforce equal protection. Clause (3) covers conspiracies to prevent voters from giving support or advocacy to candidates. And clause (4) covers conspiracies to injure citizens on account of their support or advocacy for political candidates. *See* 42 U.S.C. § 1985(3).

Defendants would read clauses (3) and (4) as mere vehicles for asserting predicate First Amendment rights, rather than as independently substantive. That view fails to notice the basic differences between clause (1), which deals with equal protection, and clauses (3) and (4), which deal with support and advocacy. Clause (1) is a vehicle for asserting predicate rights; clauses (3) and (4) stand on their own.

Clause (1) is expansively worded. By its terms, it applies to all conspiracies "for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws." 42 U.S.C. § 1985(3). Read for all it might be worth, clause (1) could "apply to all tortious, conspiratorial interferences with the rights of others." *Griffin*, 403 U.S. at 101. Concerned that such a broad reading might render § 1985(3) a "general federal tort law" and thus raise constitutional concerns, the Supreme Court has imposed two narrowing constructions on clause (1). *Id.* at 102. The first narrowing construction is that plaintiffs proceeding under clause (1) must show that the conspiracies they allege were motivated by "class-based, invidiously discriminatory animus." *Id.* The second narrowing construction is that clause (1) refers to predicate rights created elsewhere. *See Great Am. Fed. Sav. & Loan Ass'n v. Novotny*, 442 U.S. 366, 372 (1979). This construction fits the clause's language, which speaks of conspiracies to deny "equal protection of the laws" and "equal privi-

leges and immunities under the laws"—language sensibly read to refer to the operation of substantive laws beyond § 1985(3).

Defendants would have this Court apply the second narrowing construction to clauses (3) and (4), the support-and-advocacy clauses. But unlike clause (1), clauses (3) and (4) do not speak generally of privileges and immunities under the laws, thus necessarily looking to rights created by other laws. Instead, clauses (3) and (4) describe with particularity the conduct they make actionable: conspiratorial interference with federal elections. The language contains no suggestion that the clauses rely on rights defined elsewhere. Nor does the language of clauses (3) and (4) threaten to turn § 1985(3) into a general federal tort law. In short, none of the reasons for applying narrowing constructions to clause (1) applies to clauses (3) and (4). The Supreme Court has accordingly pronounced the first narrowing construction inapplicable to clauses (3) and (4). *Kush v. Rutledge*, 460 U.S. 719, 726 (1983) (limiting the narrowing construction to those portions of § 1985 that are worded in terms of equal protection). The second narrowing construction is equally inapplicable, and for the same reasons.

Defendants' view that claims under the support-and-advocacy clauses of § 1985(3) must rest on predicate First Amendment rights stems from a misreading of language from *Novotny* and *United Brotherhood of Carpenters & Joiners of America, Local 610, AFL-CIO v. Scott*, 463 U.S. 825 (1983) ("*Carpenters*"). *See* Campaign Br. 42 (quoting *Novotny*, 442 U.S. at 372, "Section 1985(3) provides no substantive rights itself; it merely provides a remedy for violation of the rights it designates."); *see also Carpenters* 463 U.S. at 833 ("§ 1985(3) . . . 'provides no substanti[ve] rights itself' to the class conspired against." (quoting *Novotny*, 442 U.S. at 372)). Defendants take this language to mean that *no clause* of § 1985(3) provides any substantive rights. From that premise, they reason that the statute's support-or-advocacy clauses must be mere vehi-

cles for invoking preexisting First Amendment rights. *See* Stone Br. 33-34; Campaign Br. 42. But Defendants' interpretation is mistaken, because the Supreme Court's statements about § 1985(3)'s not providing substantive rights refer only to clause (1). These statements have no bearing on the support-and-advocacy clauses.

Here is the relevant language from *Novotny*, itself drawing on *Griffin*. The language Defendants quote is the last sentence of the passage, after the block quote from *Griffin*.

> The Court's opinion in *Griffin* discerned the following criteria for measuring whether a complaint states a cause of action under § 1985(3):
>
> > "To come within the legislation a complaint must allege that the defendants did (1) 'conspire or go in disguise on the highway or on the premises of another' (2) 'for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws.' It must then assert that one or more of the conspirators (3) did, or caused to be done, 'any act in furtherance of the object of [the] conspiracy,' whereby another was (4a) 'injured in his person of property' or (4b) 'deprived of having and exercising any right or privilege of a citizen of the United States.'" [*Griffin*,] 403 U.S., at 102-103, 91 S.Ct. at 1798-1799.
>
> Section 1985(3) provides no substantive rights itself; it merely provides a remedy for violation of the rights it designates.

442 U.S. at 372. The quoted language from *Griffin* cannot possibly describe the requirements for causes of action under *all four clauses* of § 1985(3). It mentions, as criterion (2), only the conspiracies reached by the first clause, which deals with equal protection and equal privileges and immunities. Nothing whatsoever is said about the criteria for valid complaints under the other clauses of § 1985(3). The omission is understandable: in both *Griffin* and *Novotny*, the Court adjudicated claims under clause (1) only. So when the *Novotny* Court wrote, at the end of the quoted passage, that "Section 1985(3)" provides no substantive rights, it meant only that the first clause of § 1985(3)—the only clause at issue in the case before it—provides no such rights. The language quoted from *Griffin* supports no broader reading.

The analysis is the same for *Carpenters*. Relying on *Novotny*, the Court in *Carpenters* wrote that "§ 1985(3) . . . 'provides no substantial rights itself' to the class conspired against. The rights, privileges, and immunities that § 1985(3) vindicates must be found elsewhere." *Carpenters,* 463 U.S. at 833 (quoting *Novotny,* 442 U.S. at 372). But as explained above, the quoted language from *Novotny* is pertinent only to the first clause of § 1985(3), and it is clear from context that *Carpenters* was using it the same way. The *Carpenters* language says that the statute provides no substantive rights "to the class conspired against," and the requirement that plaintiffs demonstrate a conspiracy that victimizes a *class* applies only in actions under the first clauses of § 1985(3). *See Kush*, 460 U.S. at 726. The immediately following general language of "rights, privileges, and immunities" further echoes the language of clause (1). And of course, the *Carpenters* Court had before it only a claim brought under clause (1). *See* 463 U.S. at 827.

Defendants rely on two questionable Eighth Circuit decisions when asserting that Plaintiffs' claims under the support-and-advocacy clauses actually rest on predicate First Amendment rights. *Federer v. Gephardt,* 363 F.3d 754 (8th Cir. 2004), misread the *Carpenters* and *Novotny* language about § 1985(3)'s not providing substantive rights as if that language applied to all of § 1985(3), rather than just clause (1). *Federer* relied on *Gill v. Farm Bureau Life Insurance Co.,* 906 F.2d 1265 (8th Cir. 1990), which similarly regarded a claim under the support-and-advocacy clauses as a First Amendment claim. *Id*. at 1270. The opinion in *Gill* is exceedingly curious: its treatment of § 1985(3) contains multiple errors, large and small and sometimes obvious. For example, *Gill* asserts that *Carpenters* "squarely held" that § 1985(3) can provide no remedy for economic injuries, *Gill,* 906 F.2d at 1270—a position with no basis in *Carpenters* and that contradicts the statute's plain language affording causes of action to persons "injured in his person

or property."[31] *Gill*'s view that the support-and-advocacy clauses are merely vehicles for asserting First Amendment claims is just as mistaken.[32] As circuit precedent, *Gill* was binding on the panel that decided *Federer*. But no court outside the Eighth Circuit has ever cited *Gill*, and for good reason: it makes a mess of § 1985(3).

Unlike the first two clauses of § 1985(3), then, the support-and-advocacy clauses have substantive content that does not depend on rights established elsewhere. Those clauses make actionable specified sorts of conspiracies—conspiracies to prevent, or to retaliate for, support or advocacy given to candidates for federal office. The cause of action does not depend on an underlying First Amendment right, and no state action is required.

2. Plaintiffs adequately allege conspiratorial purpose.

The Campaign argues that the Complaint fails "to allege that the Campaign entered into the conspiracy for the purpose of preventing or injuring voters—rather than for the purpose of *convincing* voters to choose Mr. Trump over Secretary Clinton." Campaign Br. 43. Similarly, Mr. Stone argues that the Complaint actually alleges "a larger conspiratorial purpose, elect Donald Trump and defeat Hillary Clinton." Stone Br. 35. These arguments fail on their own terms. Of course Mr. Stone and the Trump Campaign acted with the purpose of winning the election for Mr. Trump. In pursuit of that end, they undertook the acts alleged in the Complaint with the purpose of impeding voters from giving support to Secretary Clinton. To conclude that defendants did not conspire for the purposes specified in § 1985(3) because their purpose could also be described in terms of making Mr. Trump the President "is akin to saying that a bank robber lacks

[31] The closest *Carpenters* came to such a holding was its statement that animus on the basis of *economic views* did not qualify as class-based animus. 463 U.S. at 838.

[32] The *Gill* opinion also consistently mislabels § 1985(3) as "§ 1985(c)" and describes § 1985 as less "familiar" than 42 U.S.C. § 1983—a statutory provision that really *is* just a vehicle for the assertion of rights created by other sources of law. *Gill,* 906 F.2d at 1266.

mens rea and thus cannot be convicted because his ultimate objective was to make money, not to commit robbery." *Libertad v. Welch*, 53 F.3d 428, 446 (1st Cir. 1995).

Plaintiffs adequately allege Defendants' purpose. The conspiracy aimed to prevent, by intimidation or threat, donors and potential donors from giving concrete financial support to Mr. Trump's opponent. By publicizing the email communications of key members of the DNC finance team, the conspirators demonstrated that anyone communicating electronically with those finance personnel was at risk of having those communications made public, along with sensitive information like credit-card numbers, bank-account numbers, and social security numbers. Threatening a loss of privacy and potential identity theft as the price of doing business with a campaign's fundraising arm is without doubt an attempt to use intimidation or threat to prevent citizens from giving support to candidates for election. That purpose brings Defendants' conspiracy within the clause (3), which covers conspiracies to prevent voters from giving support to candidates for federal office. And as applied to donors who had already given support to the campaign, publicizing communications with Trump's opponent's fundraising arm had the purpose of causing injury, including through the possibility of identity theft, as the price of doing business with the campaign, thus deterring those donors from further communications with the campaign and from giving further support. That purpose brings Defendants' conspiracy within clause (4), which covers conspiracies to injure voters on account of their support for candidates.

The Trump Campaign denies that the conspirators focused on dumping the email accounts of members of the DNC finance team. Indeed, the Campaign asserts that the Complaint characterizes the email dumps as "indiscriminat[e]." Campaign Br. 43 (quoting Compl. ¶ 21) (alteration in original). But that word is quoted out of context. When the Complaint accurately says that "tens of thousands of emails and attachments [were] indiscriminately dumped on the Inter-

net," Compl. ¶ 21, it is referring to the indiscriminate nature of the email dump *for each account whose contents were dumped*. The hacked content of each targeted account was dumped *en masse*, without any care for separating information that might be of public interest from information with no public interest. But the choice to dump the content of some accounts rather than others was made with a conscious purpose. As the Complaint specifies, six of the seven accounts dumped on July 22, 2016 belonged to members of the finance team. Compl. ¶ 16.

To be sure, the contents of one other account—that of the DNC Communications Director, Compl. ¶ 42—also was dumped. But it is not Plaintiffs' contention that the Trump Campaign conspired to hack and dump Democratic Party emails *only* for purposes covered by § 1985(3). The Trump Campaign surely also had other purposes, including, as the Campaign indicates, the ultimate purpose of getting Americans to vote for Mr. Trump. Campaign Br. 43. But no conspiracy plaintiff is required to demonstrate that the conspirators acted *only* for the specific purpose covered by the relevant conspiracy statute, any more than a prosecutor must prove that a bank robber acted only for the purpose of robbery and not also for the purpose of getting rich. Plaintiffs need only allege that Defendants acted with the purpose of using intimidation or threat as a means of deterring voters from giving financial support to its opponent, or with the purpose to injure voters on account of support given to that campaign, and that Plaintiffs were injured as a consequence. That they have done.

3. Defendants' extraterritoriality argument is irrelevant.

Defendants' contention that § 1985(3) cannot be applied extraterritorially has no bearing on this case. The Complaint specifies that, in furtherance of the conspiracy, agents of the Campaign met with Russian government representatives in the District, New York City, and Cleveland. Compl. ¶ 88. In furtherance of the conspiracy, Mr. Stone communicated with WikiLeaks founder Julian Assange through an intermediary while both Stone and the intermediary were in

the United States. Compl. ¶ 162. Defendants accordingly did everything necessary to trigger § 1985(3) while physically present within the United States. To be sure, the conspiracy in this case involved persons and events outside the United States as well as persons and events within the United States. But the fact that parts of a conspiracy occurs elsewhere does not immunize conspirators against liability for agreements and actions occurring within the United States.

4. Defendants' *respondeat superior* argument is irrelevant.

The Campaign argues that a defendant in a § 1985(3) case cannot be held liable on a *respondeat superior* theory. Campaign Br. 44. But Plaintiffs do not argue *respondeat superior*, so this contention is beside the point.[33] The term "*respondeat superior*" appears nowhere in the Complaint, and Plaintiffs' theory is not that the Campaign is liable for the improvised actions of its low-level employees. Rather, Plaintiffs assert that senior officials of the Campaign, with the

[33] Were it not beside the point, the argument that there is no *respondeat superior* liability in this case would still fail, because it is legally incorrect. The Campaign relies on three cases in which plaintiffs attempted to sue municipalities under § 1985(3) on the basis of the actions of municipal employees. Defendant Campaign is not a municipality: it is a private corporation. That difference matters. As explained in the only appellate decision the Campaign cites, *Owens v. Haas*, the proposition that *respondeat superior* liability will not lie under § 1985(3) rests on the assumption that, for this purpose, § 1985(3) should be treated analogously to 42 U.S.C. § 1983. *See* 601 F.2d 1242, 1247 (2d. Cir. 1979). Given that the reasons why plaintiffs in § 1983 actions may not recover on a theory of *respondeat superior* have to do with the specific language and legislative history of § 1983, *see Monell v. Dep't of Social Servs.*, 436 U.S. 658, 691-92 & n.57, the assumption that the same rule applies in § 1985(3) may be flawed at the outset: specific features of § 1983's language that *Monell* read to reject *respondeat superior* liability under that statute have no analogue in § 1985. *See id.* at 691-92. But even if § 1985(3) should for this purpose be treated analogously to § 1983 when the defendant is a municipality—thus making the case resemble a § 1983 case in the relevant way—the analogy is particularly out of place when the defendant is a private corporation. After all, the rule against *respondeat superior* in § 1983 is animated partly by the "serious federalism concerns" that would arise if § 1983 were read to make local governments liable for actions that are not even their own, *Bd. of Cty. Comm'rs of Bryan County v. Brown*, 520 U.S. 397, 415 (1997), and partly by the need to prevent § 1983 from forcing municipalities to shift their limited budgets from the provision of government services to the satisfaction of § 1983 judgments, *see City of Canton v. Harris*, 489 U.S. 378, 400 (1989) (O'Connor, J., concurring in part and dissenting in part). Those concerns have no bearing on suits against private defendants, and the Campaign cites no case in which a private defendant has successfully defended against a § 1985(3) claim on the ground that *respondeat superior* will not lie.

authority to act for the Campaign itself, engaged in the conspiracy. *See, e.g.* Compl. ¶ 12.[34]

In the cases the Campaign cites, the plaintiffs argued *respondeat superior* because they were seeking to impose liability on employers for the actions of low-level employees. *See Owens v. Haas*, 601 F.2d 1242, 1247 (2d. Cir. 1979) (suit against municipality for damages arising from the actions of a prison guard); *Morgan v. District of Columbia*, 550 F. Supp. 465, 468 (D.D.C. 1982) (dismissing a § 1985 claim where conduct at issue was that of individual police officers rather than flowing from "an official or unofficial custom or policy of the Metropolitan Police Department"). In contrast, Plaintiffs in the present case allege that the actionable conspiracy was known to, developed by, sanctioned by, and directly engaged in by senior members of the campaign, such that the conspiracy is attributable to the Campaign itself. That the specific conspiratorial actions in this case were undertaken by human beings acting as agents of the Campaign does not mean that those actions were not those of the Campaign. Corporations act through their agents. *See* 16 Am. Jur. 2d Conspiracy § 56 ("A corporation is capable of extra-corporate conspiracy; that is, a corporation becomes vicariously liable for the conduct of its agents who conspire with other corporations or with outside third persons. This is so because generally, for purposes of a conspiracy claim, the acts of an agent are the acts of the corporation.").[35] Section 1985 operates on that understanding. *See, e.g.*, *McAndrew v. Lockheed Martin Corp.*, 206 F.3d 1031 (11th Cir. 2000) (en banc) (reversing dismissal of § 1985 claim against private corporation arising from actions of corporate officers on behalf of the corporation).

[34] The Papadopoulos Statement of Offense corroborates Plaintiffs' allegations, as it repeatedly references high-ranking Trump Campaign officials. *See* Papadopoulos SOO ¶¶ 4, 8-9, 10, 15-16, 18-21.

[35] Even under § 1983, a municipal employer is liable for the actions "of those officials whose acts may fairly be said to be those of the municipality." *Bd. of Cty. Comm'rs of Bryan County v. Brown*, 520 U.S. 397, 403-04 (1997). The same is true under § 1985. *See, e.g.*, *Owens*, 601 F.2d at 1247 (stating that a § 1985 claim would lie against the municipal defendant if the employee's actions complained of had resulted from "a conspiracy implicating the county itself").

5. Defendants' intracorporate-conspiracy argument fails.

Mr. Stone argues that the Complaint alleges only an intracorporate conspiracy and that intracorporate conspiracies are not actionable under § 1985(3). But as previously explained, the Complaint alleges a conspiracy going beyond a single corporate entity. Furthermore—though it does not matter in this case, because the Complaint alleges a conspiracy going beyond a single entity—the question of whether § 1985(3) reaches intracorporate conspiracies remains open in this Circuit. *See Bowie*, 642 F.3d at 1130. And there are good reasons to think that the statute should reach conspiracies to interfere with federal elections even when the conspirators are all part of a single organization. After all, the statute was enacted to combat Ku Klux Klan activity during Reconstruction. As then-Judge Stevens put the point, "Agents of the Klan certainly could not carry out acts of violence with impunity simply because they were acting under orders from the Grand Dragon." *Dombrowsky v. Dowling*, 459 F.2d 190, 196 (7th Cir. 1972) (Stevens, C.J.).

6. Stone participated in the conspiracy.

Finally, Mr. Stone argues that Plaintiffs fail to allege any action by him in furtherance of the conspiracy that injured Plaintiffs. Stone Br. 35-36. But the Complaint specifically alleges that Stone participated in the conspiracy in multiple ways, including by acting as a communications channel with WikiLeaks founder Julian Assange. Compl. ¶ 162.

In sum, all of Defendants' objections to Plaintiffs' § 1985(3) claim fail. Section 1985(3) exists precisely to give voters recourse against conspiracies aimed at compromising the integrity of federal elections, and Plaintiffs have met every requirement for stating a claim.

CONCLUSION

For the reasons stated above, this Court has jurisdiction to hear this case and Plaintiffs' claims easily surpass the threshold of plausibility to which they are subject at this stage of the proceedings. Therefore, the Court should deny Defendants' motions to dismiss.

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