IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROY COCKRUM, ET AL., *Plaintiffs*, v. DONALD J. TRUMP FOR PRESIDENT, INC., ROGER STONE, *Defendants*.	Case No. 1:17-cv-1370-ESH

DEFENDANT ROGER STONE'S MOTION TO DISMISS

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Defendant Roger Stone ("Stone") respectfully moves that the Court dismiss the D.C.-law claims under Federal Rules of Civil Procedure12(b)(1); dismiss all claims for lack of personal jurisdiction under Federal Rules of Civil Procedure12(b)(2); dismiss all claims for improper venue under Federal Rules of Civil Procedure12(b)(3); and, dismiss all claims for failure to state a claim upon which relief can be granted under Federal Rules of Civil Procedure12(b)(6).

Dated: September 5, 2017.

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT ROGER STONE'S MOTION TO DISMISS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

INTRODUCTION

Three individual plaintiffs allege Russians, working on behalf of their government, hacked the Democratic National Committee's emails and other data, transferred it to WikiLeaks, which disclosed it to the world *via* the internet. Plaintiffs' data was part of that hack. The data was disclosed to the world without redaction and they claim they suffered individual consequences. Roger Stone is not alleged to have hacked, transferred, or touched the emails or other data Plaintiffs claim were disseminated. The dissemination is the claimed source of the tortious conduct. Plaintiffs only allege that Stone conspired with the Trump Campaign, the Russian hackers, and WikiLeaks -- for the publication of those emails. Stone, however, is a political strategist, pundit, and commentator. Like or dislike him for who he campaigns for or his political advocacy; that is a personal choice. Stone is an "agent provocateur.[1]" He is the First Amendment running, not walking; but his conduct cannot be adjudged a civil wrong.

Nevertheless, Plaintiffs have filed what is predominately two D.C.-common law conspiracy claims "involving public dissemination of private facts."[2] Ironically, Plaintiffs gratuitously published Roger Stone's prior home address in the caption of complaint, while alleging similar conduct is outrageous, violated their privacy, and exposed them to a heighted risk of identity theft. Their last claim is a federal conspiracy violation of civil rights.

This case is meritless and filed for sensational and politically partisan reasons. The hope is this Court will authorize a private investigation through civil discovery, into the President of

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[1] GET ME ROGER STONE, a NETFLIX Original Documentary, (2017). https://media.netflix.com/en/only-on-netflix/128318

[2] https://unitedtoprotectdemocracy.org/privacylawsuit/

the United States and as consequence, Roger Stone; an adviser and friend to President Donald Trump. Proof of this lies in the extensive conclusory allegations about the Presidential Campaign of 2016, alleged contacts and motives of the Russian government, Mr. Trump's tax returns, business and financial ties, real estate projects, and conversations with former FBI Director Comey. All of which having nothing to do with Roger Stone.

As a general proposition, Plaintiffs cannot successfully sue Roger Stone because they think he may have been involved in a grand conspiracy in a purported effort to "tilt" the election against the Democratic Candidate for President in favor of Donald Trump. Although allegations of tilting may be fodder for media speculation, in the Courts there must be a wall against all allegations that without doubt are implausible and near impossible to prove. At the outset, and at a minimum, Plaintiffs must establish standing and a legitimate claim for relief. Here there is neither. This case should be dismissed.[3]

FACTS

To avoid redundancy, Roger Stone adopts the recitation of the facts as outlined by codefendant Donald J. Trump for President, Inc.

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[3] This motion to dismiss under Federal Rule of Civil Procedure 12(b) is filed contemporaneously with Roger Stone's special motion to dismiss under the District of Columbia's strategic lawsuit against public participation ("SLAPP").

Roger Stone adopts Defendant Donald J. Trump for President's motion to dismiss, to the extent that the arguments apply to him.

ARGUMENT

Defendant Roger Stone has multiple attacks on the Complaint starting with Article III standing and then the attacks are taken in the order of Federal Rule of Procedure 12.

I. The Court does not have Subject Matter Jurisdiction. (Rule 12(b)(1)).

A. Plaintiffs lack Article III standing.

Article III standing concerns subject matter jurisdiction. *Prisology, Inc. v. Fed. Bureau of Prisons*, 852 F.3d 1114, 1116 (D.C. Cir. 2017). The party invoking federal jurisdiction bears the burden of establishing standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Plaintiffs cannot sustain this action because they allege no cognizable injury that can be fairly traced to Roger Stone's alleged actions, and thus fail to clear a fundamental constitutional threshold necessary to pursue their claims in federal court. Article III of the Constitution limits the jurisdiction of federal courts to actual "cases and controversies." U.S. Const. art. 3, § 2. Central to that requirement is that a litigant has "standing." This requires more than a "keen interest in the issue." *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2659 (2013). To avoid dismissal, the plaintiff bears the burden of demonstrating (1) he has suffered "a concrete and particularized" injury, (2) that is "fairly … trace[able] to the challenged action of the defendant, and not … th[e] result [of] the independent action of some third party [who is] not before the court," and (3) "likely … will be redressed by a favorable [judicial] decision." *Lujan*, 504 U.S. at 560-61 (internal quotation marks and citation omitted). Stone challenges that Plaintiffs have suffered a concrete and particularized injury and that Stone's actions are fairly traceable to the challenged action.

1. **Heightened risk of identity theft.**

There is a conflict among the United States Circuit Courts of Appeals regarding whether a plaintiff can establish Article III injury-in-fact based on an increased risk of future identity theft. The Sixth, Seventh, and Ninth Circuits have held that plaintiffs can establish an injury-in-fact based on the threatened injury of an increased risk of future identity theft. *See Galaria v. Nationwide Mut. Ins. Co.*, 663 Fed. Appx. 384, 388 (6th Cir. 2016) (unpublished) (plaintiff-customers' increased risk of future identity theft theory established injury-in-fact after hackers breached Nationwide Mutual Insurance Company's computer network and stole their sensitive personal information, because "[t]here is no need for speculation where Plaintiffs allege that their data has already been stolen and is now in the hands of ill-intentioned criminals"); *Remijas v. Neiman Marcus Grp., LLC*, 794 F.3d 688, 692, 694-95 (7th Cir. 2015) (plaintiff-customers' increased risk of future fraudulent charges and identity theft theory established "certainly impending" injury-in-fact and "substantial risk of harm" after hackers attacked Neiman Marcus with malware to steal credit card numbers, because "[p]resumably, the purpose of the hack is, sooner or later, to make fraudulent charges or assume those consumers' identities"); *Krottner v. Starbucks Corp.*, 628 F.3d 1139, 1142-43 (9th Cir. 2010) plaintiff employees' increased risk of future identity theft theory a "credible threat of harm" for Article III purposes after theft of a laptop containing the unencrypted names, addresses, and social security numbers of 97,000 Starbucks employees); *Pisciotta v. Old Nat'l Bancorp*, 499 F.3d 629, 632-34 (7th Cir. 2007) (banking services applicants' increased risk of harm theory satisfied Article III injury-in-fact requirement after "sophisticated, intentional and malicious" security breach of bank website compromised their information). The First and Third Circuits have denied standing under the same injury-in-fact theory. *See Katz v. Pershing, LLC*, 672 F.3d 64, 80 (1st Cir. 2012) (brokerage

account-holder's increased risk of unauthorized access and identity theft theory insufficient to constitute "actual or impending injury" after defendant failed to properly maintain an electronic platform containing her account information, because plaintiff failed to "identify any incident in which her data has ever been accessed by an unauthorized person"); *Reilly v. Ceridian Corp.*, 664 F.3d 38, 40, 44 (3d Cir. 2011). Recently, the same hack of the DNC's computer servers has been reviewed in the Southern District of Florida. In that case, the District Court dismissed the case for lack of standing based upon an alleged heightened risk of identity theft. *See Wilding v. DNC Services, Corp.*, 16-cv-61511-WJZ (ECF No. 62 at 28, Aug. 25, 2017) (DNC, the entity sued, not liable for heightened risk of identity theft).

This Circuit has ruled Plaintiffs can have standing to sue for a heightened risk of identity theft. *Attias v. Carefirst, Inc.*, 865 F.3d 620, 622 (D.C. Cir. 2017) (health insurer holding customers' stolen personal information). This case is not directly in conflict with Stone's argument. While there remains a split in the circuits regarding whether the injury is concrete, the issue of fairly traceable is dominant in this case because Stone did not hold or release the Plaintiffs' emails or own or control the server it was on. All of the cases discussing the issue of standing as it relates to a heightened risk of identity theft are at least of parties that held and controlled the data servers that were compromised. None are of third-parties.

Heightened risk of identity theft is too speculative for Plaintiffs to establish standing. Plaintiff Schoenberg alleges that his identity was stolen and used "in fraudulent *attempts* to get credit cards," that were mailed to his house. (Compl. ¶18). This necessarily means the attempts were unsuccessful. But his claim is also insufficient because he cannot establish that the identity theft he asserts came from the DNC hack. The other Plaintiffs claim an ongoing fear concerning future identity theft. (Compl. ¶ 38, 56, 57, 61). While the information disseminated by the DNC

has the potential to invite identity theft, so do the forms that the campaign is required to disclose from when donors contribute to a presidential campaign along with other methods.

Stone is not connected to a conspiracy to hack or publish. It is clear from the complaint that the DNC emails were going to be published. The Court is meant to infer Roger Stone was consulted without ever reviewing the thousands of emails and gave strategic advice on how to disseminate the tranche of emails that included Plaintiffs' data. It is implausible, however, that Stone could offer meaningful strategic advice on dissemination without viewing the emails. The complaint fails to allege sufficient conduct fairly traceable with the alleged effect because it is contingent on a chain of attenuated hypothetical events and actions by third parties independent of Roger Stone.

2. **Chilling effect on political activism.**

Plaintiffs also describe they suffer from a "chilling effect on the rights of Americans to support and advocate for candidates for office." (Compl. ¶ 181). Plaintiffs, in effect, because their data along with many others were made publicly available on WikiLeaks their desire to participate in the political process has waned and they suffered a diminution in their ability to influence the political process. Plaintiffs, financial contributors and a campaign employee of the Democratic National Committee do not suffer a cognizable injury based on claims that they "suffered a diminution in their ability to influence the political process," or that their preferred candidate was put at a disadvantage, because such theories necessarily "rest[] on gross speculation and [are] far too fanciful to merit treatment as an 'injury in fact.'" *Gottlieb v. Fed. Election Comm'n*, 143 F.3d 618, 620, 621 (D.D.C. 1998) (citation omitted). Plaintiffs' allegations that Russian hackers conspired with Stone and the Trump Campaign to have WikiLeaks strategically disseminate among others, their emails that revealed mostly information

that must be disclosed on federal campaign forms regardless, falls short of meeting the requirement of Article III standing. Because a diminution in Plaintiffs' ability to influence the political process is not a cognizable injury, this lawsuit should be dismissed for lack of standing.

Plaintiffs also cannot meet Article III's causation requirement. A large part of Plaintiffs' case is that the security breach of the DNC's servers drew attention to information about them that the DNC was required to disclose under federal campaign law. 11 C.F.R. §104.8.[4] (Compl. ¶¶ 11, 38, 56, 57, 61, 142-155). The complaint paints a picture that hackers were rummaging the DNC's files for information pertinent to the presidential election not specific to these particular plaintiffs. Plaintiffs frame the facts that the hacks and dissemination led to foreseeable risk. *See Clapper v. Amnesty Int'l,* 133 S. Ct. 1138, 1150 (2013) (observing courts' "usual reluctance to endorse standing theories that rest on speculation about the decisions of independent actors"). "A plaintiff must not only show an 'injury in fact,' but must also show that the injury is fairly traceable to the allegedly harmful conduct and that the relief sought by the plaintiff will likely redress the injury." *Arpaio v. Obama*, 27 F. Supp. 3d 185, 203 (D.D.C. 2014). The direct cause of the injury is the independent action of "Russian hackers" and WikiLeaks. The traceability of the cause and effect Plaintiffs complain becomes more constitutionally tenuous when alleged third party actions arise. *See Renal Physicians Ass'n v. U.S. Dept. of Health & Human Services*, 489 F.3d 1267, 1275 (D.C. Cir. 2007). In fact, the identity theft cases cited above describe lawsuits where the entity who was hacked was the party to the lawsuit – none were conspirators

[4] "This identification shall include the individual's name, mailing address, occupation, the name of his or her employer, if any, and the date of receipt and amount of any such contribution."

by speech. Absent a plausible causal link between the injury alleged and Defendants' actions, the Court lacks jurisdiction. *See Lujan,* 504 U.S. at 560.

In this case, Roger Stone is alleged to have offered advice to WikiLeaks on how to strategically disseminate thousands of emails held by the DNC in order to gain maximum political effect for Donald Trump. Plaintiffs do not describe how he did that other than to say Stone tweeted or publicly posted remarks to Guccifer 2.0 (an alleged Russian hacker) and a backchannel to Julian Assange, the administrator of WikiLeaks. Allegations that Stone "amplified and drew attention to hacked emails that had been published" are protected by the First Amendment as free speech. (Compl. at 33, F.) The Plaintiffs must allege more than Stone told people to look over at WikiLeaks. The Plaintiffs were not specifically targeted. Their personal information regarding their donations is required by law to be disclosed. Plaintiff Comer's sexual orientation also was not a secret to everyone but his grandparents. Most importantly, Stone did not do anything that made Russian hackers hack, or WikiLeaks disseminate the DNC's data. Because the Plaintiffs only allege tenuous events that occur at or near the time they felt they were injured, does not create a sufficient fairly traceable connection between Stone's acts and the injuries suffered. Thus, the Plaintiffs do not have standing to pursue this lawsuit.[5]

B. **Plaintiffs failed to properly allege diversity jurisdiction.**

"For jurisdiction to exist under 28 U.S.C. § 1332, there must be complete diversity between the parties, which is to say that the plaintiff may not be a citizen of the same state as any

[5] Stone also analyzes Plaintiff's failure to connect emotional distress to his actions (*infra,* section IV(F)), and a failure to allege a nexus between conduct and effect under their civil rights conspiracy. *Infra,*section IV(G)(4).

defendant." *Bush v. Butler*, 521 F. Supp. 2d 63, 71 (D.D.C. 2007). Plaintiffs allege that this Court has diversity jurisdiction because the parties "reside" in various States. Allegations that a plaintiff is a "resident" are different and distinctive than allegations about his "domicile." Plaintiffs must allege diverse domiciles, not residents.

Lack of diversity among the parties to a lawsuit is subject to a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1). *Prakash v. Am. Univ.*, 727 F.2d 1174, 1181 (D.C. Cir. 1984). It concerns subject matter jurisdiction. *Id.* at 1182. "On a motion to dismiss for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1), the plaintiff bears the burden of establishing that the court has jurisdiction." *Voinche v. Obama*, 744 F. Supp. 2d 165, 170 (D.D.C. 2010) (citation omitted). Diversity is a consideration of domiciles of the parties. "In passing upon the sufficiency of averments in petitions seeking the removal of causes from state to federal courts on the ground of diversity of citizenship, the Federal courts have repeatedly held that, whereas 'domicile' and 'citizenship' (in a state) are substantially synonymous, an allegation of residence in a state is not an averment of citizenship therein. 'Citizenship depends upon domicile, and, as domicile and residence are two different things, it follows that citizenship is not determined by residence.'" *Shafer v. Children's Hosp. Soc. of Los Angeles, Cal.*, 265 F.2d 107, 121–22 (D.C. Cir. 1959) (citations omitted).

Stone is alleged to reside in the State of Florida. (Compl. ¶ 35). Plaintiffs allege residency only. (Compl. ¶¶ 31-33). Since the complaint alleges the residency and not the domiciles of the respective parties, plaintiffs have insufficiently alleged diversity jurisdiction. *See Shafer*, 265 F.2d at 122. If there is no diversity jurisdiction, then this Court has no subject matter jurisdiction over this lawsuit. Thus, the lawsuit should be dismissed for lack of subject matter jurisdiction.

C. **The Court lacks supplemental jurisdiction.**

Supplemental jurisdiction also is improper, because Plaintiffs' D.C.-law claims "substantially predominat[e] over" their federal claim. 28 U.S.C. § 1367(c)(2). *See generally Crockett v. Mayor of the D.C.*, 181 F. Supp. 3d 70, 72 (D.D.C. 2013). Plaintiffs' common law claims are the first two causes of action, and the 42 U.S.C. § 1985(3) claim seeks relief for a civil rights conspiracy. Plaintiffs' allegations are so broad and sweeping its hope for authorization from this Court to investigate the 2016 Campaign for President does not justify the exercise of jurisdiction. The common law claims "substantially predominate" over the long-reaching weak and attempt at a connection to the federal claim, which Plaintiffs put last in their complaint. Little doubt is left as to the substantial predominance as stated by Plaintiffs' lawyers' press release describing public disclosure as "the principal claim" in this case.[6] Because the federal claim is tenuously connected to this predominate common law privacy tort case, this Court should dismiss this lawsuit.

II. **The Court lacks personal jurisdiction over Roger Stone. (Rule 12(b)(2)).**

This Court may exercise personal jurisdiction over Roger Stone only if Plaintiffs satisfy: (1) the D.C. long-arm statute; and, (2) the Due Process Clause. *GTE New Media Services Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1347 (D.C. Cir. 2000). The Plaintiffs must satisfy both. *Id*. Plaintiffs satisfy neither. Roger Stone is a non-resident defendant who also is not alleged to have committed any tort in the District.

[6] https://unitedtoprotectdemocracy.org/privacylawsuit/ "The principal claim is that the defendants, the Trump Campaign and its agents and associates, were involved in a conspiracy with Russia and WikiLeaks involving the public dissemination of private facts." (emphasis added).

A. **Exercising personal jurisdiction would violate the D.C. long-arm statute.**

The D.C. long-arm statute lists a number of grounds for jurisdiction (D.C. Code § 13-423(a)); only two are relevant here. Clause (a)(3) grants jurisdiction over a defendant who causes "tortious injury in the District" *through an act inside* the District. And clause (a)(4) grants jurisdiction over a defendant who causes "tortious injury in the District" *through an act outside* the District, but only if the defendant also engages in a persistent course of conduct in the District. Both clauses require "tortious injury in the District." There is no such injury here because: (1) this case involves a mental injury; (2) mental injury usually occurs where the plaintiff lives; and, (3) Plaintiffs all live outside the District.

Plaintiffs' "tortious injury" in this case is a mental or emotional injury. The injury in the claim for publication of private facts is the "shame" and "humiliation" caused by the disclosure, (Compl. ¶ 187). The injury in the claim for intentional infliction of emotional distress is "emotional distress." (Compl. ¶ 197). And the injury in the claim under § 1985 is the "intimidation" and distress allegedly caused by the disclosure of "private emails" (compl. ¶ 204)—all mental and emotional injury.

Plaintiffs' tortious injury, their mental harm, resides where they do. Thus, the D.C. Circuit has held that usually occurs "in the place where the plaintiff lives." *Crane v. Carr*, 814 F.2d 758, 760 (D.C. Cir. 1987) (citing *Calder v. Jones*, 465 U.S. 783, 787 (1984)) (effects of infliction of emotion distress caused by published article jurisdictionally sufficient because that is where the effects are felt) (other citations omitted). Injuries to one's "mental and emotional well-being" can "only have been sustained" where one lives. *Aiken v. Lustine Chevrolet, Inc.*, 392 F. Supp. 883, 886 (D.D.C. 1975).

Plaintiffs all live outside the District, thus their alleged mental or emotional injury occurred outside this District. Cockrum lives in Tennessee, Schoenberg in New Jersey, and Comer in Maryland. (Compl. ¶¶ 31–33.) None of them experienced their injuries in the District, as the long-arm statute requires. This argument more so applies for Roger Stone. Stone was sued in his individual capacity. The allegations by Plaintiffs about the Campaign are not shared by Stone, meaning nothing alleged connects Stone to the District. *Aiken*, 392 F. Supp. at 886.

It is also not enough that Comer worked in the District. (Compl. ¶ 5). True, "emotional or reputational injury" can sometimes occur not just "where the plaintiff lives" but also where he "works." *Helmer v. Doletskaya*, 393 F.3d 201, 208 (D.C. Cir. 2004). It does so, however, only when the injury in question concerns the plaintiff's "career"—for example, where a "libelous story" impugns the plaintiff's "professional reputation." *Calder* 465 U.S. at 788–89. But Comer's alleged injuries arise from disclosure of his sexual orientation—a feature of his personal life, not his work life. Moreover, that disclosure allegedly disrupted Comer's relationship with his "grandparents" (Compl. ¶ 45), not his relationship with work colleagues. In fact, Comer's colleagues already knew his sexual orientation, which Comer discussed in his work emails. (*Id.*). In short, his sexual orientation was not a secret to everyone accept his grandparents and certain other relatives. Thus, although emotional injury *can* occur in one's workplace, Comer's alleged injury occurred where he lived, in Maryland. In short, none of the Plaintiffs can satisfy the D.C. long-arm statute.

B. **Exercising personal jurisdiction would violate the Due Process Clause.**

"Even when the literal terms of the long-arm statute have been satisfied, a plaintiff must still show that the exercise of jurisdiction is within the permissible bounds of the Due Process Clause." *GTE*, 199 F.3d at 1347. The Due Process Clause authorizes two forms of personal

jurisdiction: general and specific. A court with general jurisdiction may hear *any* claim against a defendant, regardless of where the claim arose; a court with specific jurisdiction may only hear claims that arose in the forum. *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1780 (2017). This Court has neither general nor specific jurisdiction.

General jurisdiction is no factor. "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile. . . ." *Daimler AG v. Bauman*, 134 S. Ct. 746, 760 (2014) (citations omitted). Roger Stone does not live or work in the District. Plaintiffs do not allege he committed any act in the District. Nor do they allege he conspired with anyone else within the District. Therefore, general jurisdiction does not apply.

This leaves specific jurisdiction. Specific jurisdiction requires a "relationship among the defendant, the forum, and the litigation." *Walden v. Fiore*, 134 S. Ct. 1115, 1126 (2014). A court has specific jurisdiction only if (1) the defendant has "purposefully established minimum contacts" with the forum by "purposefully direct[ing]" his activities there and (2) the plaintiff's claims "arise out of or relate to" those activities. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985). Bare allegations of agency or conspiracy is insufficient to establish personal jurisdiction. *Second Amendment Found. v. U.S. Conference of Mayors*, 274 F.3d 521, 525 (D.C. Cir. 2001). Plaintiffs must allege specific acts connecting a defendant to the forum. *Id.*

This case does not arise out of Roger Stone's actions in the District of Columbia. Plaintiffs do not allege that anyone, including Stone, published the emails from within the District. Nor do they allege that the Campaign conspired with anyone else within the District. So there is no specific jurisdiction. None of Plaintiffs' allegations suggests otherwise.

First, the presence of the DNC's headquarters in the District (Compl. ¶ 30) does not create jurisdiction. Specific jurisdiction can rest only on "contacts that the defendant *himself*

creates with the forum." *Walden*, 134 S. Ct. at 1122. The Supreme Court has "consistently rejected attempts to satisfy the defendant-focused 'minimum contacts' inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum." *Id.* For example, a court does not acquire personal jurisdiction "merely because the plaintiff … was residing" in the forum at the time of the defendant's actions. *Id.* at 1123. Likewise, this Court does not acquire personal jurisdiction merely because the DNC (which is not even a plaintiff, but a third party) is headquartered in the District.

Second, the claim that Russian hackers "hacked into the email systems of the DNC in the District," (compl. ¶ 7) likewise does not create personal jurisdiction. To begin with, Plaintiffs have not even pled that the hacked servers themselves were located in the District. Rather, the complaint alleges only that the DNC's "headquarter[s]" were located there. (Compl. ¶ 30.) The precise semantics of the allegations are not simple or plain enough to invoke the Court's jurisdiction. Plaintiffs state the data was hacked, copied, and then given to WikiLeaks, which disseminated it. Where Plaintiffs data was located, *i.e.* where their wallets were stolen is critical to determining jurisdiction. To clarify, "[m]ost people have no idea whether their doctor, lawyer or accountant maintains records in paper or electronic format, whether they are stored on the premises or on a server farm in Rancho Cucamonga, whether they are commingled with those of many other professionals or kept entirely separate." *United States v. Comprehensive Drug Testing, Inc.*, 621 F.3d 1162, 1176–77 (9th Cir. 2010) (per curiam) (en banc). To model conceptually what a "hack" is, the Court should think about it like the "breaking and entering" of a home. The importance of the specifics of the hack is then understood. "All of the published emails were sent to or from and resided on the DNC's servers, were maintained by the DNC, and were hacked from those servers." (Compl. ¶ 30). This sentence is tricky since emails do not work

exactly like regular post office mail. Every time an email is sent a copy of it resides on the computer or the server the sender's computer sent it from. If the person blind copies (bcc) another or the system is automatically "backed up" or archived, there is another copy. That copy may reside somewhere different than the sender's computer or the server is physically is located elsewhere. Perhaps certain email servers offered on the internet or "the cloud" provide another offsite copy of the sender's email. The same is true for the computer receiving the email. Alleging that a server is being "maintained" by the DNC does not mean it is physically located at the DNC headquarters in Washington, D.C. and those were necessarily the servers that were hacked. Where was the DNC's data located when it was hacked, becomes a material question. Said another way, on which server did the data reside? The Plaintiffs must allege and eventually prove where exactly the data they claim was stolen was located; otherwise, this complaint must be dismissed because this Court would not have personal jurisdiction over Stone.

More fundamentally, even if the servers were located in the District, personal jurisdiction must (as just noted) rest on the defendant's own contacts with the forum. *See Walden*, 134 S. Ct. at 1122. Jurisdiction thus cannot rest on an allegation that third parties (Russian computer hackers) hacked computers within the District. That is particularly so because Plaintiffs never allege that Stone in any way participated in, conspired to conduct, or aided and abetted the initial hack.

In all events, specific jurisdiction extends only to claims that "arise out of or relate to" the defendant's activities in the forum. *Bristol-Myers*, 137 S. Ct. at 1780. Plaintiffs' claims arise out of and relate to the *publication*, not the *acquisition*, of the emails. In fact, as a matter of tort law, liability for publication does "not turn on the manner in which [the information] has been obtained." *Pearson v. Dodd*, 410 F.2d 701, 706 (D.C. Cir. 1969). Since the claims do not arise

from the alleged hack, allegations that the hack targeted computers in the District could not establish personal jurisdiction.

Third, the accessibility of WikiLeaks in the District (compl. ¶ 30) does not create specific jurisdiction. The D.C. Circuit has ruled jurisdiction cannot rest on the "mere accessibility" of a website in the forum. *GTE*, 199 F.3d at 1350. Personal jurisdiction requires action "purposefully directed" at the forum (*Burger King*, 471 U.S. at 472), but posting something on the internet, where the entire world can read it, is not action "purposefully directed" at the District. In addition, if mere accessibility were enough, a defendant who posts material on the internet would be subject to jurisdiction "in any forum in the country," "shred[ding]" the "constitutional assurances" provided by the Due Process Clause "out of practical existence." *GTE*, 199 F.3d at 1350. Because dissemination of data on the internet including the District of Columbia is insufficient to connect Stone to this District for purposes of personal jurisdiction, he must be dismissed because this Court does not have jurisdiction over him.

III. **The District of Columbia is an improper venue for this lawsuit. (Rule 12(b)(3)).**

Rule 12(b)(3) of the Federal Rules of Civil Procedure authorizes a party to move to dismiss a case for "improper venue." Similarly, the federal venue statute, 28 U.S.C. § 1406(a), requires that a district court "dismiss, or if it be in the interest of justice, transfer" a case, which is filed "in the wrong division or district." 28 U.S.C. § 1406(a). Together, "Section 1406(a) and Rule 12(b)(3) allow dismissal only when venue is 'wrong' or 'improper'... in the forum in which [the case] was brought." *Atl. Marine Constr. Co. v. U.S. Dist. Court,* 134 S. Ct. 568, 573 (2013). "Whether venue is 'wrong' or 'improper' depends exclusively on whether the court in which the case was brought satisfies the requirements of federal venue laws, ..." *Id.*at 578. *See also Fam v. Bank of Am. NA (USA)*, 236 F. Supp. 3d 397, 405 (D.D.C. 2017).

The moving party objecting to the venue must provide sufficient specificity to advise Plaintiffs of the defect. *Id.* Once Plaintiffs are on notice of the defect, the burden shifts to them to establish that venue is proper. *Id.* (citations omitted). When assessing the motion for improper venue, the court should accept Plaintiffs' well-pled factual allegations regarding venue. *Id.* (citations omitted). On the other hand, the Court should not accept Plaintiffs' legal conclusions as true, and may consider material outside the pleadings. *Id.* at 406 (citing *Jerome Stevens Pharm., Inc. v. Food & Drug Admin.,* 402 F.3d 1249, 1253 (D.C. Cir. 2005)) (other citations omitted).

According to 28 U.S.C. §1391(b)(1), venue is proper in a "judicial district which any defendants resides, if all defendants are residents of the State in which the district is located." Roger Stone does not reside in the same State as the Donald J. Trump Campaign for President, Inc. Thus, this part of the statute does not apply. Second, venue is proper in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated." 28 U.S.C. § 1391(b)(2). *Fam,* 236 F. Supp. 3d at 406. Plaintiffs allege a world-wide conspiracy of Russians working for the Russian government and using Julian Assange of WikiLeaks, wherever he is located, throughout the complaint. Neither defendant resides in this District. None of the Plaintiffs reside in the District. The only allegation in this lawsuit that places the setting in this District is that the DNC resides in the District. There are allegations surrounding the DNC servers that were hacked and that data was copied and stolen; but for purposes of venue and jurisdiction (also as alleged above), the semantics of the allegation are critical to a determination of where Plaintiffs' data was hacked, and consequently whether this Court is a proper forum.

Plaintiffs' allegation is venue is proper because the DNC is headquartered in the District. Plaintiff Comer was employed by the DNC, and all of the published emails were sent to or from and resided on the DNC's servers, were maintained by the DNC, and were hacked from those servers. Moreover, Plaintiffs' private information was published across the world, including in this District. The claim that "Plaintiffs suffered injury in this District," (compl. ¶ 30) is unsubstantiated since none of them reside in the District. Roger Stone is not alleged to have hacked or even known about the hack before it occurred; rather, Stone is alleged to have conspired to effectively disseminate the Plaintiffs' data (and everyone else in the DNC) in order to effectuate maximum political impact. None of this allegedly happened in the District. (Compl. ¶ 78–86.) Thus, venue is not proper in this District.

While presumptively this Court should transfer venue rather than dismiss this case, if the only ground for dismissal is improper venue. *Fam*, 236 F.Supp.3d at 408 (citing 28 U.S.C. §1406(a)). Venue is proper in "any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action." 28 U.S.C. § 1391(b)(3). Those choices are the Southern District of Florida, the Southern District of New York (principal place of business for the Trump Campaign), or Eastern District of Virginia (state of incorporation for the Trump Campaign). Roger Stone, in the event this Court does not grant the motion to dismiss, requests this Court transfer venue to the Southern District of Florida where he resides. Alternatively, the Southern District of New York, where the Trump Campaign resides is a suitable alternative.

IV. **Plaintiffs fail to state a claim upon which relief can be granted. (Rule 12(b)(6)).**

A. **Standard of Review**

Until the Supreme Court decision in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), courts routinely followed the rule that, "a complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff could prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). However, pursuant to *Twombly*, to survive a motion to dismiss, a complaint must now contain factual allegations which are "enough to raise a right to relief above the speculative level . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Twombly,* 550 U.S. at 555. "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* In all, determining whether a complaint states a plausible claim for relief will "be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *see also Pena v. A. Anderson Scott Mortg. Group, Inc.*, 692 F. Supp. 2d 102, 106 (D.D.C. 2010). Second, the court must determine whether the well-pled factual allegations, if assumed to be true, "plausibly give rise to an entitlement to relief." *Iqbal*, 556 U.S. at 662. When the factual allegations are "not only compatible with, but indeed [are] more likely explained by" lawful activity, the complaint must be dismissed. *Id.* at 663.

A complaint must be dismissed if it consists only of "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Id.* at 678. "Although 'detailed factual allegations' are not necessary to withstand a Rule 12(b)(6) motion to dismiss, to provide

the 'grounds' of 'entitle[ment] to relief,' a plaintiff must furnish 'more than labels and conclusions' or 'a formulaic recitation of the elements of a cause of action.'" *Gerlich v. United States Dep't of Justice,* 659 F.Supp.2d 1, 4 (D.D.C.2009) (quoting *Twombly,* 550 U.S. at 555–56)). The plausibility standard "asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678. Thus, "[f]actual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Twombly*, 550 U.S. at 555. Following *Iqbal*, this District Court has applied the *Iqbal* standard strictly in cases ranging from racketeering to age discrimination, and other civil rights cases.[7]

Applying the *Iqbal* standard in this case, it is abundantly clear that Plaintiffs' allegations of conspiracy fall short in crossing the line from "conceivable" to the "plausible" as they allege fantastic claims that are conclusory and unlikely. *See Iqbal*, 556 U.S. at 680. As discussed below, the allegations are implausible because they do not clearly identify who are the members of the conspiracy; if the DNC was actually hacked or it was taken from the inside on a USB thumb drive, how the computer hacking of the DNC servers occurred, who and how many hacked, where the computer server hack occurred, and, how did Stone encourage delivery of the data to WikiLeaks and coach its impactful dissemination. Plaintiffs fail to allege *any* facts that could plausibly support a viable claim, relying instead on broad and conclusory allegations, largely gleaned from unsourced publications.

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[7] *See Sandza v. Barclays Bank PLC,* 151 F. Supp. 3d 94, 101 (D.D.C. 2015) (RICO case applying "implausibility" standard); *Spaeth v. Georgetown Univ.*, 839 F. Supp. 2d 57, 58 (D.D.C. 2012) (ADEA case); *Middlebrooks v. Bonner Kiernan Trebach & Crociata*, 671 F. Supp. 2d 61, 64 (D.D.C. 2009) (§ 1981 case); *Partovi v. Matuszewski*, 647 F. Supp. 2d 13, 18 (D.D.C. 2009) (§ 1983 case).

B. **The allegations are vague and do not support a complete and plausible set of facts.**

The facts of *Iqbal* are instructive on delineating sufficient allegations from insufficient conclusory allegations. In the wake of the September 11, 2001, terrorist attacks Iqbal was arrested in the United States on criminal charges and detained by federal officials. *Iqbal*, 556 U.S. at 666. He claims he was deprived of various constitutional protections while in federal prison. *Id.* He filed a complaint against numerous federal officials, including John Ashcroft, the former Attorney General and Robert Mueller, the then Director of the FBI. *Id.* The complaint against Ashcroft and Mueller alleged that they adopted an unconstitutional policy that subjected Iqbal to "harsh conditions of confinement on account of his race, religion, or national origin." *Id.* After he pled guilty to criminal charges and served his term of imprisonment, Iqbal sued in United States District Court and 34 current and former federal officials, and 19 unnamed federal corrections officers under *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971). *Id.* at 668.

The complaint further alleged that "[t]he policy of holding post–September–11th detainees in highly restrictive conditions of confinement until they were 'cleared' by the FBI was approved by Ashcroft and Mueller in discussions in the weeks after September 11, 2001." *Id.* at 669. Lastly, the complaint posited Ashcroft and Mueller "each knew of, condoned, and willfully and maliciously agreed to subject" Iqbal to harsh conditions of confinement "as a matter of policy, solely on account of [his] religion, race, and/or national origin and for no legitimate penological interest." *Id.* The pleading named Attorney General Ashcroft as the "principal architect" of the policy, and identified Mueller as "instrumental in [its] adoption, promulgation, and implementation," *Id.*

The failure of Iqbal's pleading is that he pled as fact allegations that were "merely consistent with" a defendant's liability, it "stop[ped] short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.* at 557. Like Plaintiffs' complaint, the essential allegations are presented merely consistent with liability and are so outrageous and unexplained that it comes nowhere near line of possibility and plausibility. *See id.* Plausibility of the complaint is a "context-specific task" that requires the court to draw on its "judicial experience" and "common sense." *Id.* at 679.

Looking at this complaint within only its four corners should lead this Court to conclude in its experience that Plaintiffs' complaint is too vague to survive a motion to dismiss. In a hyperbolic manner, Plaintiffs have alleged, with nothing but reference to unverified Intelligence and media reports, the allegations are correct. When referencing Intelligence reports, these citations beg the question, which report is being referenced. Both alleged referenced Intelligence reports and news reports from various media are inadmissible hearsay when used in motions for summary judgment. *See Gilmore v. Palestinian Interim Self-Gov't Auth.*, 53 F. Supp. 3d 191, 201 (D.D.C. 2014). While the Court may consider proper attachments to a complaint, Plaintiffs do not attach the reports they reference. *See E.E.O.C. v. St. Francis Xavier Parochial Sch.*, 117 F.3d 621, 624 (D.C. Cir. 1997). In the posture of a motion to dismiss, it is also not acceptable.

Plaintiffs must identify with whom Roger Stone conspired. *See Bush v. Butler*, 521 F. Supp. 2d 63, 69 (D.D.C. 2007). Alleging Stone conspired with Russians is as broad and as absurd as saying he conspired with Americans. Plaintiffs do not identify the "multiple agents" of the Campaign. They do not identify who are the agents or the "entities"; and more particularly, who are the ones who are "close to the Russian President and government." (Compl. ¶ 11). *See Acosta Orellana v. CropLife Intern.*, 711 F. Supp. 2d 81, 113 (D.D.C. 2010) (when and how the

offending agreement was brokered must be factually supported). Furthermore, the terms of the agreement are not specified so that there was a "meeting of the minds"; a pleading requirement that must be met. *See Graves v. United States*, 961 F. Supp. 314, 320 (D.D.C. 1997). What does being "close to the Russian government" mean? Then, in an attempt to be as inflammatory as possible, the Plaintiffs accuse those unnamed individuals of conspiring with unnamed entities that sought to "maximize the impact" of the hacked data. The complaint does not say how or what Roger Stone did to facilitate the political maximization.

Without identifying with whom Stone conspired, they do not illustrate a "meeting of the minds." *See id.*; *McCreary v. Heath*, CIV.A. 04-0623 PLF, 2005 WL 3276257, at *5 (D.D.C. Sept. 26, 2005) (unpublished)."Those in control of the hacked materials"(compl. ¶ 11), consulted with Stone leaves the questions of when and where widely open; in addition to, what did he tell those people. Because these questions are unanswered, the complaint is vague and conclusory and does not meet the pleading standard of Rule 8.

Without that level of specificity, Plaintiffs will never be able to show they are entitled to relief. Without more specificity, Plaintiffs complaint fails to "nudge" their claim "across the line from conceivable to plausible." *See id.* at 683 (citing *Twombly*, 550 U.S. at 570).

C. **Plaintiffs fail to state a claim of conspiracy.**

1. **Conspiracy between Stone and the Campaign.**

Plaintiffs do not state a proper theory of conspiracy to support any claim. An agent of a corporation cannot conspire with the corporation itself. *Executive Sandwich Shoppe, Inc. v. Carr Realty Corp.*, 749 A.2d 724, 739 (D.C. 2000) (referred to as the "intracorporate conspiracy doctrine"); *Tabb v. D.C.*, 477 F. Supp. 2d 185, 190 (D.D.C. 2007) (citing *Dickerson v. Alachua County Comm.*, 200 F.3d 761, 767 (11th Cir. 2000)). Stone was an employee at a relevant period,

and ". . . continued to play an important role in the Trump Campaign as agent and advisor even after his alleged departure, and he remained in regular contact with Trump throughout the campaign," according to paragraph 35 of the complaint. (emphasis added). In short the complaint alleges Stone was always acting as an agent of the Trump Campaign for President. The D.C.-law, therefore, does not support a claim of conspiracy between Stone and the Campaign. *See Kowal v. MCI Communications Corp.*, 16 F.3d 1271, 1279 (D.C. Cir. 1994).

2. **Conspiracy between Stone and Russian agents.**

Plaintiffs' overused incantation of upon "information and belief" does not meet the standard enunciated in Rule 8 and *Iqbal,* 556 U.S. at 678 (complaints must state "plausible" claims for relief). The phrase does not add credibility to the allegation and it signals the remainder of the allegation is conclusory. The phrase is allowable in a complaint; 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) (citing *Arista Records, LLC v. Doe 3*, 604 F.3d 110, 120 (2d Cir. 2010); *see also Kvech v. Holder*, 10-CV-545 RLW, 2011 WL 4369452, at *3 n. 7 (D.D.C. Sept. 19, 2011) (unpublished). In fact, the parties with the most technical information about what might have happened are conspicuously not a party to this action – the DNC and the "Russians." The Court should remove the phrase and the reading of the material allegations will reveal the complaint as conclusory and implausible. *Franklin v. Curry*, 738 F.3d 1246, 1250-51 (11th Cir. 2013) (district court should identify and remove conclusory allegations not entitled to the assumption of truth). *See also Robertson v. Cartinhour*, 867 F. Supp. 2d 37, 59 n. 57 (D.D.C. 2012) (citing *Kowal*, 16 F.3d at 1279)).

Plaintiffs refer to the Russians throughout its complaint. They refer to "secret meetings," "phone calls," emails, lawyers, and "Putin confidants." (Compl. ¶¶ 74, 76-104). Roger Stone is not alleged to have attended, called, sent emails, or been connected in any way to Putin or his "confidants." The complaint copies and refers to an uncited report in the *New York Times* and serves in large part as the basis for Stone's summons to this lawsuit.[8] (*See* Compl. ¶¶ 35, 138, 145-148). One allegation in paragraph 35 comingles Stone with Paul Manafort, and must be called to the Court's attention. "In early 2016, Stone helped arrange his longtime friend and former business partner Manafort to become chairman of the Trump Campaign. He has consulted on political strategy around the world, including in Ukraine. . . 'His ties to Russia are now under scrutiny by the F.B.I.'" The "he" and "his" in the *New York Times* refers to Manafort, not Stone. Citing to the *New York Times* does not avoid the pleading requirements of Rule 8; Plaintiffs should not replace Stone for Manafort. The complete quotation in the *New York Times* report states: "His ties to Russia are now under scrutiny by the F.B.I., but Mr. Manafort denies any suggestion that he colluded with Russian officials or anybody else." The allegation in the complaint implies reference to Stone when clearly the article does not. This is an example of why Rule 8 requires more than just conclusory allegations. It is meant to avoid misleading allegations and protracted litigation when it is clear no plausible claim can be made. *See Twombly,* 550 U.S. at 558-59.

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[8] Maggie Haberman, *Roger Stone, the 'Trickster' on Trump's Side, Is Under FBI Scrutiny,* New York Times, Mar. 21, 2017. https://www.nytimes.com/2017/03/21/us/roger-stone-donald-trump-russia.html

Furthermore the complaint does not allege the who, what, where, and when of Stone's involvement in any conspiracy. *See id*. at 565 n.10. Plaintiffs claim the goal of dissemination of the emails was disruption of the Democratic campaign. (Compl. ¶108). But the alleged meetings and contacts with Russians, all but the one with Russian lawyer, Natalia Veselnitskaya (compl. ¶116), occurred after the release of the email tranche by WikiLeaks on July 22, 2016. (compl. ¶136). The Veslenitskaya meeting does not allege to have been about dissemination of DNC emails. And none of the allegations refers to Stone being connected to those meetings.

Plaintiffs also claim that the Russians received "benefits" in a meeting of the minds that led to an agreed *quid pro quo.* (Compl. ¶¶ 14-15, 22, 83, 99, 123-25, 136). Plaintiffs do not specify what "benefits" were provided to the Russian government, what concessions made were "important to Russia's national interests, or how the "drafting" the Republican Party Platform was influenced because of this agreement. Plaintiffs do not specify what were the Republican Party's planks of its platform that shifted or changed. (Compl. ¶ 123). Nor do they sufficiently allege what "generally positive communications posture" entails. (Compl. ¶14). The most important missing link is a total absence of what role Stone played in any of these allegations to promote Russia's agenda.

Stone's public social media posts alleged in the complaint are therefore nothing more than political speech. 'Podesta's time in the barrel,' 'WikiLeaks will drop a payload of new documents soon,' 'Wednesday Hillary Clinton is done,' 'Assange is my hero and will educate the American people;' and the like, is what political operatives do during a campaign. They proclaim their candidate is great, the opposition candidate is bad. In the context of a campaign, none of this demonstrates that Stone participated in the strategic dissemination of Plaintiffs' emails.

3. **Conspiracy between Stone and WikiLeaks.**

WikiLeaks did not commit a tort; therefore Roger Stone could not have vicarious liability for conspiring to participate in actions that do not amount to a tort. *See Hall v. Clinton,* 285 F.3d 74, 83 (D.C. Cir. 2002) (citation omitted). The Communications Decency Act of 1996, 47 U.S.C. §230, shields interactive computer services from liability from those who post on its site. Stone is not alleged to have taken the Plaintiffs' data from the DNC or transferred it to WikiLeaks. Mere encouragement of publication of Plaintiffs' data on WikiLeaks is not a tort and Stone cannot be held liable. *See Klayman v. Zuckerberg,* 753 F.3d 1354, 1358 (D.C. Cir. 2014). This protection from liability exists even if WikiLeaks fails to edit the posts coming from third party users. *See id.* Since WikiLeaks could not be held liable for its act of dissemination, then Stone cannot be held liable even if he were to have encouraged or reveled in the dissemination.

Again, the complaint also fails to specify how "the Defendants" and "those they conspired with arranged" for the hacked data to be "provided to WikiLeaks." (Compl. ¶16). This skips over critical allegations of overt acts in order for this Court to determine if the allegations are "plausible" or conclusory. *See Iqbal,* 556 U.S. at 680. This is particularly important when analyzing allegations regarding Roger Stone in this complaint. Paragraph 16 is the moving part of this entire lawsuit. Plaintiffs do not state what Stone did to "arrange" the transfer of hacked data to WikiLeaks. They do not allege Stone touched a computer, made a phone call, met with anyone of Russian decent, let alone performed an act that furthered the conspiracy. Plaintiffs cite to media where Stone allegedly admits to speaking to Assange through a "backchannel," (compl. ¶138), but that is insufficient to allege a conspiracy. The complaint as a whole does not rule out that Stone's political expressions are nothing more than predictions, prescient analysis, or political punditry, that Americans can see every day all day long on our various media outlets.

D. **D.C.-Law does not support any theory of aiding and abetting.**

Roger Stone cannot be liable for aiding and abetting. The tort theory of aiding and abetting is not recognized under District Law. *3M Co. v. Boulter,* 842 F.Supp.2d 85, 119 (D.D.C.2012) (citing *Flax v. Schertler,* 935 A.2d 1091, 1108 n.15 (D.C.2007)). Although Plaintiffs may invite this Court to recognize a theory of aiding and abetting, citing to *Halberstram v. Welch,* 705 F.2d 472, 479 (D.C. Cir. 1983), in the ensuing three plus decades, D.C.-law has not recognized such a theory of liability. *Sundberg v. TTR Realty, LLC*, 109 A.3d 1123, 1129 (D.C. 2015) ("not recognized the tort of aiding and abetting in the District").

Plaintiffs' allegations that Stone communicated on a public social network with Russian intelligence operatives (Guccifer 2.0 and others) or agents through "backchannels" of WikiLeaks strains credulity and is not aiding and abetting. (Compl. ¶¶145-152). Stone's "tweets" or public postings are speech and protected by the First Amendment. Second, there is no allegation that Guccifer 2.0 is a Russian group or individual, hacker, or the same Guccifer 2.0. Third, the tweets and comments are not necessarily predictive but anticipative or historical commentary. Indeed, the allegations themselves do not rule out that the information was flowing from WikiLeaks to Stone. Regardless, the law of the District of Columbia does not recognize this theory of liability and thus cannot support any cause of action alleged.

E. **Failure to State a Claim of Public Disclosure of Private Facts.**

In the District of Columbia, the tort of public disclosure of private facts has five 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 v. Grunseth v. Marriott Corp.*, 79 F.3d 169 (D.C. Cir. 1996) (unpublished) (citing *Wolf v. Regardie,* 553 A.2d 1213, 1220 (D.C.1989)). Plaintiffs have alleged

that Stone conspired or aided and abetted WikiLeaks to disclose private facts about Plaintiffs publicly.

Public disclosure is "an intentional tort." *Randolph v. ING Life Insurance & Annuity Co.*, 973 A.2d 702, 711 (D.C. 2009). "The defendant must intend to reveal the [private] information." *Dobbs' Law of Torts* § 581 (2017). This requirement is essential in light of the First Amendment, which generally allows the punishment of truthful speech only if the speaker "intends to produce" the harm that the state seeks to prevent. *Hess v. Indiana*, 414 U.S. 105, 109 (1973). Again, the fact that Stone is not alleged to have taken or transferred any private data is key to whether Plaintiffs alleged a theory of conspiracy, aiding and abetting, or the elements of this tort at all. Roger Stone can comment on published news. *See Wolf*, 553 A.2d at 1220. He can even comment on how the news is unfair and biased.

As to Plaintiff Comer, he alleges his sexual orientation was publicly disclosed. However, in paragraph 5 he admits in 2011, "he came out as gay to his mother and close friends. He did not tell his grandparents, because he knew that they viewed homosexuality as inconsistent with their deeply held religious beliefs. For the next five years, he kept his sexual orientation from his grandparents so as not to upset them or disrupt his relationship with them, which he cherished." Comer, without concern, wrote emails from his workplace to friends and referred to his sexual preference and to others. Later in the complaint Comer's circle of people who did not know his sexual orientation grew. His "family members—including his grandparents—searched for and read emails to, from, and about him, including emails suggesting that Mr. Comer is gay." (Compl. ¶ 45). Had he known about the disclosure of the emails, he would have told his family in a different way. (Compl. ¶45).

Roger Stone did not give publicity to a matter concerning the private life of another; rather, Comer attempted to maintain privacy to a matter that was public to almost everyone but his grandparents and other family members. Indeed, the only reason Comer's sexual preference has caused him any distress is because of his perception of how his grandparents might respond and supposedly their reaction to news of his sexual orientation, and his decision to keep that part of his life a secret to them. This was his personal choice. This allegation does not meet the element of private fact.

Plaintiff Comer also cannot blame the Roger Stone for Comer writing "colloquial references" about homosexuals on his employer's (work) email server. (Compl. ¶ 65). The responsibility for his distress is misplaced, if Comer was not polite and precise in his work email communications and some people scorned him for it. This lawsuit cannot serve as blame on Roger Stone because the DNC (a third party) failed to protect their employees' emails or WikiLeaks (a third party) opened the work emails without redaction for the world to review.

In this day and age, Comer's sexual preference is not "highly offensive" to a reasonable person and his choice to keep the information known by most who knew him since 2011 a secret from his grandparents, does not make it a private fact subject of a tort. *See Doe v. Bernabei & Wachtel, PLLC*, 116 A.3d 1262, 1266 (D.C. 2015) (citing Restatement (Second) of Torts § 652D (1977)). Publicity means a communication in such a manner that it is "substantially likely to become one of public knowledge." *Id.* (citing Restatement (Second) of Torts §652D (1977) comm. a)). Since Comer's sexual preference is not outrageous all the elements of tort is not met. Since the Comer's sexual orientation was a secret only it was already public knowledge. Giving additional publicity to Comer's known preference is not a ground for liability. *See Paige v. U.S. Drug Enforcement Admin.,* 818 F.Supp 4, 16 (D.D.C. 2010). As to health information, but for a

reference to Comer having a virus at work, there is no specified health information for other Plaintiffs and therefore does not meet the element of private fact.

Lastly, public-disclosure torts cover "*embarrassing* private facts." *Harrison v. Washington Post Co.*, 391 A.2d 781, 784 (D.C. 1978) (emphasis added). "Embarrassing," in the sense that disclosure would cause "shame" and "humiliation." *Armstrong v. Thompson*, 80 A.3d 177, 189 (D.C. 2013). "Private," means the plaintiff has revealed it "at most" to "family" and "close friends." Restatement (Second) of Torts § 652D, comment b. Social security numbers, addresses, are not "embarrassing," "shameful," or "humiliating." People disclose that information daily, not just to family and friends. So the public-disclosure tort does not cover them. *See In re Barnes & Noble Pin Pad Litigation*, 2016 WL 5720370, at *7 (N.D. Ill. Oct. 3, 2016) (social security number); *In re Zappos.com, Inc.*, 2013 WL 4830497, at *3 (D. Nev. Sep. 9, 2013) (social security number); *In re Carter*, 411 B.R. 730, 741 (M.D. Fla. 2009) (social security number); *Johnson v. Sawyer*, 47 F.3d 716, 732 (5th Cir. 1995) (address).

Other laws deal with the problems caused by exposure of social security numbers. For example, using improper means to gain access to a social security number can amount to the separate tort of intrusion. *Randolph*, 973 A.2d at 710. A D.C. statute also requires businesses to safeguard consumer financial data against security breaches. D.C. Code § 28-3852. But the exposure of a social security number simply does not constitute a public disclosure of private facts, the tort asserted here. And the criminal law also protects consumers and citizens from identity theft. *See* 18 U.S.C. § 1028A(a)(1).

Lastly, Plaintiffs also allege that Cockrum's support for political candidates has been chilled. (Compl. ¶17). Plaintiffs also reference in general terms to a "chilling effect" on the democratic process because of dissemination of a hacked employee's email and supporter

information is also not stating a claim. (Compl. ¶181). First, Plaintiff Comer worked for the DNC. One's work emails are not necessarily private. *Gauntlett v. Illinois Union Ins. Co.*, 5:11-CV-00455 EJD, 2012 WL 4051218, at *9 (N.D. Cal. Sept. 13, 2012) (expectation of privacy must be alleged of work email); *Miller v. Blattner*, 676 F. Supp. 2d 485, 497 (E.D. La. 2009) (emails are property of the company that provides the email capability); *United States v. Yudong Zhu*, 23 F. Supp. 3d 234, 238 (S.D.N.Y. 2014) (citing *United States v. Ziegler,* 474 F.3d 1184, 1198 (9th Cir. 2007) (no allegations of expectation of privacy on computer like encryption on laptop). Second, it is unclear how donors could be chilled from donating to the Democratic Party because donor information is required to be disclosed and is public record. There are campaign disclosure requirements that all political parties must maintain. 11 C.F.R. §104.8. Thus, the "foreseeable consequence" is not so foreseeable and must be explained further before that allegation can be considered plausible and not conclusory.

F. **Failure to State a Claim for Emotional Distress.**

As to intentional infliction of emotional distress, "a plaintiff must show (1) extreme and outrageous conduct on the part of the defendant which (2) intentionally or recklessly (3) causes the plaintiff [to suffer] severe emotional distress." *Doe v. Bernabei & Wachtel, PLLC*, 116 A.3d 1262, 1269 (D.C. 2015) (citing *Ortberg v. Goldman Sachs Grp.,* 64 A.3d 158, 163 (D.C.2013)) (brackets in original). Plaintiffs do not allege extreme or outrageous conduct. *See id.* "To survive a motion to dismiss," a plaintiff must allege conduct that was "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 utterly intolerable in a civilized community." *Id.* (citing *Williams v. District of Columbia,* 9 A.3d 484, 494 (D.C.2010)). Plaintiff Comer's sexual orientation is not regarded as atrocious and utterly intolerable. *See id.* The allegation that Comer had a virus and graphically

described it to his boss at work is not either. The disclosure of information described in the complaint is not outrageous, atrocious, and utterly intolerable. Thus, Plaintiffs have not alleged the elements of the tort intentional infliction of emotional distress.

G. **Plaintiffs fail to state a civil rights conspiracy claim under § 1985(3).**

Plaintiffs' only federal question claim is for conspiracy to violate civil rights under Title 42 Section 1985(3) by "intimidating lawful voters from giving support or advocacy to electors for President and to injure citizens in person or property on account of such support or advocacy." (Compl. ¶25). Section 1985(3) provides no substantive rights itself; it merely provides a remedy for violation of the rights it designates. *Great Am. Fed. Sav. & Loan Ass'n v. Novotny*, 442 U.S. 366, 372 (1979).

While they do not expressly cite to a federal right or the Constitution, interpreting their claim, Plaintiffs complain they were not free to associate and advocate for the candidate of their choice; they do not allege a conspiracy. In other words they were denied the protections of the First Amendment. If Plaintiffs' complaint is based upon First Amendment protections, then state action is required. In this lawsuit, neither defendant is a state actor. Additionally, Plaintiffs' claims do not apply territorially outside the United States and also fails to state a claim for conspiracy with the Trump campaign.

1. **Plaintiffs' complaint fails to allege state action.**

"Therefore, the Court found that § 1985(3) did provide a cause of action for damages caused by purely private conspiracies." *Great Am. Fed. Sav. & Loan Ass'n,* 442 U.S. at 371-72. But this does not mean that § 1985(3) allows all private claims to be redressed. The First Amendment is meant to protect people from government encroaching on the right to assemble and speak. The civil conspiracy claim can only be made is when state action is alleged. *United*

Broth. of Carpenters & Joiners of Am., Local 610, AFL-CIO v. Scott, 463 U.S. 825, 833 (1983); *Federer v. Gephardt*, 363 F.3d 754, 759 (8th Cir. 2004); *Roe v. Abortion Abolition Soc.*, 811 F.2d 931, 933 (5th Cir. 1987) (citing *id.*) ("section 1985(3) does not, protect individuals against private efforts to encroach on constitutional shields, such as the first amendment)).

Plaintiffs do not cite in their complaint to any amendment in our Bill of Rights that they request be vindicated. They leave that task to the Defendants and this Court. Plaintiffs' constitutional claim is that Defendants conspired to disclose their personal information as well as their "lawful support and advocacy for a candidate for President," to draw attention to the disseminated DNC emails containing Plaintiffs' private information." (Compl. ¶ 206). "Defendants conspired to prevent by intimidation Plaintiffs and others like them from giving their support or advocacy in a legal manner for a candidate for President of the United States." (Compl. ¶ 207). Defendants conspired to injure Plaintiffs and others like them in "their persons and property on account of their support or advocacy in a legal manner for candidate for President of the United States. (Compl. ¶¶ 208, 209). Plaintiffs have been deprived of the ability to exercise rights and privileges of citizens of the United States. (Compl. ¶ 210). In the light most favorable to the Plaintiffs, they are claiming an infringement upon their First Amendment rights. Since allegations of infringement of First Amendment rights requires an allegation of state action and no state action is allege or could be alleged, Plaintiffs §1985(3) claim must be dismissed.

2. **The intracorporate conspiracy doctrine applies to section 1985(3) lawsuits.**

As outlined above, the Trump campaign cannot conspire with Roger Stone since he was alleged to always be an agent of the Campaign. *See Kelley v. D.C.*, 119–20 (D.D.C. 2012). "Several circuits have applied the intracorporate conspiracy doctrine in civil rights cases under 42 U.S.C. § 1985 to preclude conspiracy liability for a municipal entity's employees, while other

circuits have declined to apply the doctrine in that context." *Tabb v. District of Columbia,* 477 F.Supp.2d 185, 190 (D.D.C.2007) (listing cases); *Bowie v. Maddox,* 642 F.3d 1122, 1130–31 (D.C.Cir.2011). The D.C. Circuit has not ruled on the issue. *Id.* at 1130 n. 4, 1131. District courts within this Circuit have, however, "consistently ... applied the intracorporate conspiracy doctrine to Section 1985." *Tabb,* 477 F.Supp.2d at 190.

At least seven circuits have held the intracorporate conspiracy doctrine applies to civil rights conspiracies. *See Grider v. City of Auburn,* 618 F.3d 1240, 1261–62 (11th Cir.2010); *Hartline v. Gallo,* 546 F.3d 95, 99 n. 3 (2d Cir.2008); *Amadasu v. Christ Hosp.,* 514 F.3d 504, 507 (6th Cir.2008); *Benningfield v. City of Houston,* 157 F.3d 369, 378 (5th Cir.1998); *Hartman v. Bd. of Trustees of Cmty. Coll. Dist. No. 508,* 4 F.3d 465, 469–71 (7th Cir.1993); *Richmond v. Bd. of Regents of Univ. of Minnesota,* 957 F.2d 595, 598 (8th Cir.1992); *Buschi v. Kirven,* 775 F.2d 1240, 1252–53 (4th Cir.1985). For the grounds stated in Part IV(C)(1) *supra,* this Court should dismiss the civil right conspiracy claim against Roger Stone.

3. **Plaintiffs cannot allege a civil rights conspiracy with entities outside the United States.**

Plaintiffs improperly seek to apply § 1985(3) for actions that allegedly occur outside the United States. Federal laws "apply only within the territorial jurisdiction of the United States" unless Congress "clearly" says otherwise. *Morrison v. National Australia Bank Ltd.,* 561 U.S. 247, 255 (2010). Far from clearly saying otherwise, § 1985(3) begins: "If two or more persons *in any State or Territory* conspire …" (emphasis added). But "Russian actors" and WikiLeaks are not "persons in any State or Territory." Because Roger Stone could not enter into a civil rights conspiracy with actors or entities outside the United States, the 1985(3) conspiracy claim must be dismissed.

4. **Plaintiffs have failed to allege with particularity a nexus between the defendants' overt conspiratorial acts and Plaintiffs' alleged injury.**

Plaintiffs claim a specific violation of Section 1985(3) pertaining to a conspiracy to injure a citizen on account of support or advocacy. The purpose of the conspiracy is different than the effect. Plaintiffs have effectively claimed that they were bystanders of a larger conspiratorial purpose, elect Donald Trump and defeat Hillary Clinton. (Compl. ¶¶ 24, 110). "The plaintiff's § 1985 claim also must be dismissed because at the pleading stage a plaintiff is required to allege a connection between the overt acts, the furtherance of the conspiracy and the plaintiff's injury." *Graves v. United States*, 961 F. Supp. 314, 321 (D.D.C. 1997) (citation omitted). Plaintiffs fail to allege any conspiracy as explained in Part IV(C), *supra.* At best, Plaintiffs correlate allegations with injury. For example, they claim Roger Stone expressed a view or political and therefore that means the events that he caused the subsequent events. (Compl. ¶¶145-152). Stone's words, even if he knew WikiLeaks was going to publish DNC data does not allege that he caused or did some act in furtherance of release of the emails absent some other allegations of an overt act that he engineered, directed, or assisted in the taking of the emails. Without more, there is no cause and effect that alleges a nexus between the overt acts and the injury to the specific Plaintiffs in this lawsuit.

CONCLUSION

The Court should dismiss the complaint for lack of subject-matter jurisdiction, lack of personal jurisdiction, and improper venue. Alternatively, it should dismiss the complaint for failure to state a claim.

Dated: September 5, 2017

Respectfully submitted,

/s/ Robert Buschel
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CERTIFICATE OF SERVICE

I certify that on September 5, 2017, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all registered parties.

/s/ Robert Buschel
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