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 REPLY IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT

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Defendant Roger Stone ("Stone") respectfully files this reply memoranda and moves this Court to 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: December 29, 2017.

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INTRODUCTION

Roger Stone is a political advocate that is being singled out by the political forces supporting the Plaintiffs. Plaintiffs create a vast conspiracy within the Trump Campaign and, as an aside; sue Roger Stone because he exercised his right to speech. Roger Stone is not portrayed by Plaintiffs as a leader, a mastermind, or even a player in their conspiracy.

Plaintiffs do not allege Roger Stone hacked, transferred, or advised how to hack, transfer, or disseminate any data held on the Democratic National Committee's ("DNC") servers. Plaintiffs hope the Court ignores the dates of Roger Stone's alleged overt acts – all of which occurred after Plaintiffs' emails were posted on WikiLeaks. Plaintiffs' allegations assume the Court will connect Stone to a conspiracy without saying when he joined it. They want to hold him responsible for prior acts of the conspiracy before he allegedly joined it. The amended complaint alleges a single "chain" conspiracy where at some point after the DNC's servers were hacked and the data transferred to WikiLeaks, Roger Stone is said to have communicated with a hacker and then someone who communicated with someone at WikiLeaks. (Opp. 30).

At other points in the amended complaint, Plaintiffs claim that they were bystanders of a larger conspiracy by the Campaign to conspire with Russians. But in order to make Roger Stone part of any conspiracy Plaintiffs were required to allege he was part of a conspiracy before their data was disseminated by WikiLeaks. Even assuming by implication that Plaintiffs sufficiently allege the other elements of a conspiracy, they did not allege he committed an overt act in furtherance of the conspiracy until after July 22, 2016 – the day the DNC emails were disseminated. Without alleging Roger Stone was a member of the conspiracy, that is, meeting all the elements of civil conspiracy, he cannot be held liable for any cause of action: conspiracy to violate D.C. common-law privacy, intentional infliction of emotional distress, and conspiracy to

violate civil rights. Plaintiffs not only want to reinvent the civil conspiracy law in the District of Columbia, they also wish to legislate a new federal civil rights conspiracy law by making § 1985(3) a substantive right versus a remedy for constitutional violations. The law does not allow this. Their amended complaint must be dismissed.

ARGUMENT

I. The Court does not have jurisdiction.

A. Plaintiffs lack Article III standing.

The key to resolving the question of Article III standing is recognizing that Roger Stone is not a member or partner of the conspiracy. At most, Stone spoke to someone who spoke to someone at WikiLeaks but only after Plaintiffs emails were disseminated. Plaintiffs do not allege that Stone told WikiLeaks to disseminate Plaintiffs' emails or even John Podesta's emails. Even if the person who spoke to Stone said WikiLeaks is going to release John Podesta's emails, and Stone in less than 140 characters[1] tweeted about it, this would be insufficient to make him a coconspirator.

In order for Plaintiffs to properly allege their injuries were fairly traceable to Stone's conduct they must tie Stone to the "one conspiracy" Plaintiffs claim exist. Elements of civil conspiracy include: (1) an agreement between two or more persons; (2) to participate in an unlawful act, or a lawful act in an unlawful manner; (3) an injury caused by an unlawful overt act performed by one of the parties to the agreement; (4) which overt act was

[1] CNN Tech, Welcome to a world with 280-character tweets, http://money.cnn.com/2017/11/07/technology/twitter-280-character-limit/index.html Nov. 7, 2017, last visited Dec. 22, 2017.

done pursuant to and in furtherance of the common scheme. *See, e.g., Ryan v. Eli Lilly & Co.,* 514 F.Supp. 1004, 1012 (D.S.C.1981). *Halberstam v. Welch,* 705 F.2d 472, 477 (D.C. Cir. 1983).

The agreement would have to be that Roger Stone agreed to participate in the hacking, transfer, or actual dissemination of the DNC data, which included Plaintiffs' data. Plaintiffs do not allege this. Plaintiffs do not allege that Stone or the Campaign knew the hacks were going to occur before it occurred. There is no allegation that Stone or the Campaign told the Russian hackers to give the DNC data to Wikileaks. Plaintiffs do not allege Stone helped Wikileaks disseminate the data; *i.e.* place the data on Wikileaks servers and disseminate it or release this tranche of emails first. Claiming Stone told the public to look at Wikileaks for information about John Podesta and Hillary Clinton is the 21st century version of communicating: Look at the Pentagon Papers in the *New York Times*. Plaintiffs do not sufficiently allege that Stone told Wikileaks how to effectively disseminate the data. The key to Stone being lumped together with actors from the Campaign is that he was part of the conspiracy and he is liable for others' misdeeds. If it is not sufficiently alleged that he is part of the conspiracy, then he cannot be liable for the conduct of others, even if the allegation of conspiracy against the others is sufficient.

Plaintiffs claim Roger Stone ignores Plaintiffs' alleged injuries: severe emotional distress resulting from dissemination of personal and identifying information; and resulting instances of actual identity theft, harassment, and damage to important personal and professional relationships. But Stone's actions or allegedly unlawful conduct are not "fairly . . . traceable" to Plaintiffs' injuries if he did not join the conspiracy until after they were injured; there is no

allegation that he was ever part of the conspiracy. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (citation omitted).

The DNC emails were going to be published. The Court is meant to infer Roger Stone was consulted without ever reviewing the emails and gave strategic advice on how to disseminate the tranche of emails that included Plaintiffs' data. But this was not alleged specifically about Stone. None of Stone's conduct, therefore, is fairly traceable to their injuries, no matter what they allege were as a result of the publication of 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.

B. **The Court lacks diversity jurisdiction.**

Plaintiffs failed invoke the District Court's diversity jurisdiction by claiming the amount in controversy exceeds $75,000. *See* 28 U.S.C. § 1332. Plaintiffs have attempted to aggregate their claim for purposes of the amount in controversy but that is insufficent. (Am. Compl. ¶29) (prayer for relief b). *See Georgiades v. Martin-Trigona*, 729 F.2d 831, 833 (D.C. Cir. 1984). Plaintiffs' amount in controversy claim cannot be stacked. Plaintiffs acknowledge they cannot establish diversity jurisdiction without satisfying the amount in controversy requirement. Each individual plaintiff must meet the threshold amount of controversy requirement. *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546, 555 (2005). Because Plaintiffs (not even one of them) failed to properly allege the amount in controversy, the amended complaint must be dismissed because the Court does not have diversity jurisdiction over their claims. *See CFTC v. Nahas*, 738 F.2d 487, 492 n. 9 (D.C. Cir. 1984) (". . . a party must … affirmatively allege in his pleadings the facts showing the existence of jurisdiction") (citations omitted).

C. **The Court lacks personal jurisdiction over Roger Stone.**

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). Plaintiffs satisfy neither. Roger Stone is a non-resident defendant who also is not alleged to have committed any tort in the District.

1. **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.

Plaintiffs suggest that the Campaign since January 20, 2017, has been controlled in the District. (Opp. 22). Presumably, they are making this assumption because the Trump campaign won the election. But the Campaign's objective was completed on November 8, 2016 – election day. Roger Stone after August 2015 was not a part of the Campaign. (Am. Compl. ¶ 41). He is not a member of the White House. Roger Stone did not cause an act in the District and neither did the Campaign since the conspiracy was one about dissemination of their emails occurring outside the District. *See* D.C. Code § 13-423(a)(3). Stone also does not regularly do or solicit business or persistent in a course of conduct or derive substantial revenue from goods used or consumed or services rendered in the District. *See* D.C. Code § 13-423(a)(4). Alleging Roger Stone made a speech and met with other Campaign workers after the completion of the conspiracy (dissemination of Plaintiffs' emails), on July 11, 2017 in the District does not extend

the conspiracy nor would it lend personal jurisdiction to any of Plaintiffs' claims. (Am. Compl. ¶¶ 41, 216). *See Gruenwald v. United States*, 353 U.S. 391, 399 (1957) (concealment or denial of conspiracy is not an overt act of the conspiracy).

As to the 1985(3) conspiracy, Plaintiffs cannot say they were "intimidated" in the District since none of them live or vote in the District. The tortious effect of the intimidation (injury) supposedly sustained was by reason of dissemination of their emails *via* WikiLeaks and nothing done in the District. Thus, there is no tortious injury in the District and consequently no personal jurisdiction over Roger Stone.

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

Specific jurisdiction requires a "relationship among the defendant, the forum, and the litigation." *Walden v. Fiore*, 134 S. Ct. 1115, 1126 (2014). Plaintiffs set aside Stone's conduct in the District (a speech and couple of meetings after the conspiracy is completed) and tell the Court to look to the named and unnamed coconspirators. (Opp. 20). Again, bare allegations of agency or conspiracy are insufficient to establish personal jurisdiction. *Second Amendment Found. v. U.S. Conference of Mayors*, 274 F.3d 521, 525 (D.C. Cir. 2001). Plaintiffs failed to allege specific acts connecting Roger Stone or the campaign to the forum. *See id.* They also offer no allegations Stone joined the conspiracy before the tortious injury in the District.

But even if we assume for a moment Roger Stone was part of a conspiracy and the Court should look to the acts of the coconspirators; none of them committed any acts in the District since this was a conspiracy about dissemination, not hacking. Certainly, the campaign for president ended once the results of the election were returned. The case does not arise out of Roger Stone's actions in the District of Columbia. *See Bristol-Myers Squibb Co. v. Superior*

Court, 137 S. Ct. 1773, 1780 (2017). Therefore, the due process element of personal jurisdiction is not met either.

II. **The District of Columbia is an improper venue for this lawsuit.**

For the reasons why Plaintiffs have not established personal jurisdiction over Roger Stone, similarly apply to the issue of venue. None of the allegations central to the conspiracy happened in the District. (Am. Compl. ¶ 88–101). Plaintiffs do not allege that WikiLeaks published the emails from within the District; and, they do not allege the conspirators had a meeting of the minds in the District. Thus, venue is not proper in this District.

This conspiracy is about the dissemination of emails – not the hack. (Opp. 27 n. 10). Anything else like meeting and speech making in the District post-conspiracy is incidental and do not play a substantial role in the alleged conspiracy. *See* 28 U.S.C. § 1392(b)(2). Thus, venue is improper in the District.

III. **Plaintiffs fail to state a claim upon which relief can be granted.**

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

Plaintiffs have failed to connect Roger Stone to the conspiracy alleged. Plaintiffs did not allege that Stone joined the conspiracy against Plaintiffs or a larger objective of disseminating DNC emails until after Plaintiffs emails were disseminated. Because Stone did not join the conspiracy at any point before Plaintiffs claim they were injured, he cannot be liable for a conspiracy in which he was not a member.

Plaintiffs in their response memorandum describe a single "chain" conspiracy rather than a "wheel" conspiracy -- multiple conspiracies connected to a center hub of a wheel. (Opp. 29). *See United States v. Tarantino,* 846 F.2d 1384, 1392 (D.C. Cir. 1988); *Kotteakos v. United States*, 328 U.S. 750, 755 (1946). They clarified that there is a single conspiracy where the

Campaign conspired with Russians, WikiLeaks, and Roger Stone, in order to disseminate Plaintiffs' personal emails, and that violated D.C. common law rights as well as their federal civil rights. They further clarified that Roger Stone was part of the Campaign's conspiracy rather than independently conspiring apart from the Campaign. An analysis of the District's conspiracy law and case law support the dismissal of Stone from this lawsuit.

"A list of the separate elements of civil conspiracy includes: (1) an agreement between two or more persons; (2) to participate in an unlawful act, or a lawful act in an unlawful manner; (3) an injury caused by an unlawful overt act performed by one of the parties to the agreement; (4) which overt act was done pursuant to and in furtherance of the common scheme." *Halberstam v. Welch*, 705 F.2d 472, 477 (D.C. Cir. 1983) (citation omitted) (emphasis added). As to the first element, it is not alleged that Roger Stone made an agreement during the relevant time frame. Outside of lumping Roger Stone with "Defendants," Plaintiffs never allege he participated in an unlawful act or a lawful act by unlawful means; or, was a member of the conspiracy when they were injured by an act in furtherance of the conspiracy. In short, they did not allege that Roger Stone was a member of the conspiracy before they were injured by the conspiracy.

"It is, of course, true that conspirators are responsible for the overt acts of co-conspirators, even those that occurred before they entered the conspiracy. . . retrospective liability of co-conspirators does not operate to make the late-entering conspirator responsible for the already completed substantive offenses of his cohorts." *Campbell v. A.H. Robins Co., Inc.*, 615 F.Supp. 496, 500 (D.C.Wis., 1985) (citing *United States v. Covelli*, 738 F.2d 847, 859 (7th Cir.1984), cert. den. 469 U.S. 867, (citing *United States. v. Knippenberg*, 502 F.2d 1056, 1059 (7th Cir.1974)). Plainly stated: "The purpose of a civil conspiracy claim is to impose liability on all those who

agreed to join the conspiracy. By joining, the members become legally responsible for the tortious acts taken in furtherance of the object of the conspiracy, including those taken by coconspirators. *Master-Halco, Inc. v. Scillia, Dowling & Natarelli, LLC*, 739 F. Supp. 2d 104, 107 (D. Conn. 2010) (citation omitted).

Plaintiffs would hold Roger Stone liable for the acts of a conspiracy before he joined it because he joined what they perceive was still on an ongoing conspiracy that lasted beyond their own injuries. (Opp. 21). The amended complaint describes three separate hacks (break in) and thefts (stealing data) from three separate data sources (databases) – Democratic National Committee ("DNC"), Democratic Congressional Campaign Committee ("DCCC"), and the Clinton Campaign (John Podesta's emails). The DNC database held Plaintiffs' data but the DCCC hack did not include any of Plaintiffs' data. (Am. compl. ¶¶ 7-8, 170, 172). And presumably, the Clinton campaign was hacked since it held John Podesta's emails. The only relevant inquiry is whether the lawsuit alleges Roger Stone conspired to disseminate Plaintiffs' emails held on the DNC's server – and no one else's.

The important point here is that Plaintiffs cannot seek to introduce allegations of conspiratorial acts that were committed before Defendants even became involved with Plaintiffs. *See id.* at 109. Indeed, Roger Stone cannot be liable for torts which occurred before he joined the conspiracy. *See S. Union Co. v. Sw. Gas Corp.*, 165 F. Supp. 2d 1010, 1026 (D. Ariz. 2001). In examining the temporal element in criminal conspiracies, the courts have repeatedly held that one cannot be liable as a coconspirator if the crime was committed before one joined the conspiracy. *Kidron v. Movie Acquisition Corp.*, 40 Cal. App. 4th 1571, 1593 (1995) (citing *People v. Zamora*, 557 P.2d 75 (Cal. 1976) (["acts committed by conspirators subsequent to the

completion of the crime which is the primary object of a conspiracy cannot be deemed to be overt acts in furtherance of that conspiracy"])).

The Court must consider when the conspiracy is alleged to have begun and ended. *See Krulewitch v. United States*, 336 U.S. 440, 442 (1949) (court required to determine for purposes of admitting codefendant's statement whether conspiracy "never existed or had long since ended in success or failure. . ."). Plaintiffs suggest the Court expand the main objective of the alleged conspiracy to defeat Hillary Clinton, as opposed the conspiracy's completion -- when Plaintiffs were injured. Plaintiffs imply, but do not specifically allege, the conspiracy remains ongoing because Donald Trump is President. When a conspiracy ends is important. For example, it may become important when analyzing a statute of limitations. *Grunewald v. United States*, 353 U.S. 391, 397 (1957). But Plaintiffs cannot extend the conspiracy beyond their injuries because that would be prosecuting rights for third parties who are not plaintiffs. Plaintiffs' civil conspiracy claims are limited by the damages to them. *See id.* at 398. "In examining whether these conditions are fulfilled, the crucial question . . . is the scope of the conspiratorial agreement . . ." *United States v. Hitt*, 249 F.3d 1010, 1015 (D.C. Cir. 2001) (citations omitted). Conspirators must have agreed on the essential nature of the plan. *Id.* (citations omitted). Efforts to conceal a conspiracy cannot be assumed as an automatic overt act of the conspiracy. *See Gruenwald*, 353 U.S. at 391. All of this language assumes at the relevant time of the agreement, there was an agreement. Roger Stone is not alleged to have had an agreement with the Campaign until after the alleged damages were suffered by Plaintiffs.

The one case Plaintiffs rely upon is *United States v. Bridgeman*, 523 F.2d 1099 (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." *Id.* at 1108. The prior acts before joining a conspiracy is based upon knowledge the conspiracy existed, defendant associated himself with it and "contributed his efforts during its life to further its design." *Id.* (citation omitted) (emphasis added). Plaintiffs are misreading the term "prior to." "Prior to" does not assume a completed tort. Plaintiffs would like the Court to authorize them to vindicate the rights of others whose emails were published on WikiLeaks but they can only vindicate their own rights. They cannot therefore say that the conspiracy is larger than themselves because they can only seek damages for their injuries.

Plaintiffs are otherwise foreclosed from making the assertion they have alleged a conspiracy involving Roger Stone because one of the essential elements of a civil conspiracy claim is an agreement between two or more persons. *Hobson v. Wilson*, 737 F.2d 1, 15 (D.C.Cir.1984), abrogated on other grounds by *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit,* 507 U.S. 163, 168, (1993). Plaintiffs do not allege Roger Stone had knowledge of the conspiratorial acts before he allegedly agreed to help the conspiracy at a time the agreement to disseminate Plaintiffs emails was made.

What is left is Plaintiffs allegation that Roger Stone implicitly denied his involvement in the conspiracy by giving a speech claiming Russian interference in the election is false in the face of Plaintiffs' overwhelming belief it is true. (*See* Am. Compl. ¶ 216). Stone also spoke to "Guccifer 2.0" and "WikiLeaks" after the completion of the tort – after the dissemination. These are merely allegations of "parallel conduct" that the *Twombly* Court stated "does not suggest conspiracy," it could just be independent conduct. *Bell Atl. v. Twombly,* 550 U.S. 544, 556 (2007). Plaintiffs failed to set out Roger Stone's conduct in context that "raises a suggestion of a preceding agreement. . . ." *Id.*

This leaves the unanswered question: At what point in time does the amended complaint allege Roger Stone went from campaign adviser and advocate to coconspirator? On July 22, 2016, Plaintiffs emails were disseminated *via* WikiLeaks. (Am. Compl. ¶ 16). What act did he commit that was wrongful that changed legal protected advocacy conduct into illegal conduct? In short, Plaintiffs were required to allege Roger Stone joined the Campaign conspiracy before it can paint Stone with the same brush as the rest of the unnamed coconspirators.

Roger Stone is not alleged to have attended, called, sent emails, or been connected in any way to Putin or his "confidants." (Am. Compl. ¶¶ 88, 102-118). Plaintiffs tacitly agree, by failing to rebut paragraph 41 improperly comingles Stone with Paul Manafort. Plaintiffs emphasize they do not have to prove the conspiracy with direct evidence, but they do have to allege that Roger Stone joined the conspiracy with acts that occurred prior to the release of their emails, and acts that cannot be construed as legal, "parallel" conduct. (Opp. 24). Plaintiffs assert that they allege that "the conspiracy between Defendants and their coconspirators explicitly included the dissemination of the stolen emails that is not a prerequisite to liability." (Opp. 25). But, it is the only act that could qualify as an overt act in furtherance of the conspiracy and Stone's participation in the conspiracy during the relevant time -- an act before Plaintiffs allege their injury.

Plaintiffs claim the Trump team of staff and advisors have an "astonishing" number of close ties to Russia. (Opp. 26). Roger Stone is not alleged by Plaintiffs to have any. Associates had "frequent contact" with "Russian operatives." According to the amended complaint, Stone had two twitter posts to a "Guccifer 2.0," who has the same username ("handle") as the alleged hackers of the DNC servers, neither of those tweets discussed the conspiracy to steal emails and disseminate them; and none which came before Plaintiffs' emails were disseminated. Stone's

alleged contacts with WikiLeaks[2] also came after disclosure of Plaintiffs' emails. Additionally, Roger Stone's communications were not described in the complaint, outside of the posts themselves, but without alleging any facts Plaintiffs assume his communications must have been something nefarious. While Plaintiffs highlight all the allegations they are not required to allege but do anyway, in footnote 10 of their response; they fail have to allege Stone joined a conspiracy that was formed. *See, e.g., Halberstam,* 705 F.2d at 487.

Plaintiffs claim behaviors before and after the release of their emails demonstrates a conspiracy; they do not allege any overt acts by Stone before the alleged torts against them were complete. (*See* Opp. 28). In explaining their allegations, Plaintiffs claim: "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." (Opp. 28). This is the full description of what Roger Stone did to join and to further the alleged conspiracy. These allegations do not allege Roger Stone joined a conspiracy to hack and disseminate DNC emails before they were disseminated. Even if they did occur before the date of injury, it still would be insufficient.

First, just because someone took credit for the hack does not make it so. "Guccifer 2.0" is not described as a specific person or a group of people. But the Twitter username (something

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[2] Plaintiffs hope the Court will assume WikiLeaks is something else other than a legitimate media outlet. But this assumption cannot be maintained. As recently as December 14, 2017, a tribunal in the United Kingdom recognized WikiLeaks as a "media organization." *the guardian,* located at:
https://www.theguardian.com/media/2017/dec/14/wikileaks-recognised-as-a-media-organisation-by-uk-tribunal

that can be registered by anyone or anything) was credited for stealing Plaintiffs' data. Second, there is no allegation that Stone is communicating with the person who indeed committed the hack. Plaintiffs do not allege *the* "Guccifer 2.0" Roger Stone is communicating with on Twitter is the same hacker of the DNC emails.

At best, Plaintiffs are convinced that since Stone communicated to WikiLeaks after the hack and the dissemination, he must have joined the conspiracy prior to this point. As previously explained, this assumption cannot be maintained because one is not responsible for the acts of coconspirators until one has joined the conspiracy. *See Halberstam,* 705 F.2d at 487. A focused look at the amended complaint does not suggest that Stone communicated with WikiLeaks at a time prior to the release of Plaintiffs' data.

Additionally, Stone speaking to Assange or WikiLeaks is not an overt act even if occurring prior to dissemination. Plaintiffs do not allege Roger Stone advised WikiLeaks about how to disseminate DNC emails. In fact, the allegations are that Stone spoke to a Russian hacker, (¶ 170), presumably Guccifer 2.0 (¶ 171), and Guccifer 2.0 "released documents obtained from the DCCC." As has been made clear in Plaintiff's response, this is a case about dissemination of their emails. Comments about them, by anybody, after they have been disseminated cannot make one a coconspirator of their release.

Plaintiffs, never explicitly allege that Stone unlawfully advised WikiLeaks about the dissemination of DNC emails, all of which were eventually published by WikiLeaks. Stone's public social media posts alleged in the complaint are nothing more than political speech about the dissemination after it occurred. '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. In

the context of a campaign, none of this demonstrates that Stone participated in the strategic dissemination of Plaintiffs' emails. All the allegations referring to Roger Stone are parallel conduct that does not sufficiently allege his part in a civil conspiracy. Without him joining the conspiracy, he cannot be liable for the overt acts of others. *See Twombly*, 550 U.S. at 554.

Reverting back to the warning from the Supreme Court about overextending conspiracy theories: "Few instruments of injustice can equal that of implied or presumed or constructive crimes. The most odious of all oppressions are those which mask as justice." *Krulewitch*, 336 U.S. at 457–58. Plaintiffs do not sufficiently allege a conspiracy and therefore Roger Stone must be dismissed from this lawsuit.

B. **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)). Plaintiffs cite to *Halberstram v. Welch*, 705 F.2d 472, 479 (D.C. Cir. 1983), a case which distinguishes between the law of conspiracy and aiding and abetting in the District, and nothing more. It does not hold or recognize aiding and abetting is a civil cause of action. Although Plaintiffs may invite this Court to recognize a theory of aiding and abetting, citing to *Halberstram*, 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 have not pled the elements of aiding and abetting. They fail in alleging "(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." *See Halberstam*, 705 F.2d at 477. Again, if the conspiracy was about dissemination and not the hack or transfer of data to WikiLeaks, Plaintiffs have not alleged Stone aided a wrongful act – the hacking of the DNC servers or the transfer of the data to WikiLeaks. *See id.*

If the dissemination of what Plaintiffs claim is private data, caused the disclosure of private facts and emotional distress, then if Roger Stone did not help the Russians or WikiLeaks, it is not aiding or abetting. Additionally, Stone did not join the conspiracy before publication of Plaintiffs' emails, Plaintiffs could not have properly pled he aided any wrongful act that caused injury to Plaintiffs. Plaintiffs did not specifically allege Stone had knowledge of a Russian hacker's plan to steal the DNC's data and transfer it for publication. Nor, did they allege Stone substantially assisted in any wrong doing. Thus, the amended complaint does not support a theory of aiding and abetting.

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

In addition to the arguments made by the Campaign, Roger Stone cannot be liable for this D.C.- common law tort because he did conspire before publication of the private data. Public disclosure is "an intentional tort." *Randolph v. ING Life Insurance & Annuity Co.*, 973 A.2d 702, 711 (D.C. 2009). A key element to this intentional tort is the allegation that Stone caused (or conspired to or aided in causing) the publication of private data. *See Oveissi v. Islamic Republic of Iran*, 768 F. Supp. 2d 16, 33 (D.D.C. 2011). Stone is not alleged to have taken or transferred any private data. Plaintiffs must have alleged Stone was a part of the conspiracy or offered specific aid before publication of Plaintiffs' emails in order to support a theory of conspiracy, aiding and abetting, or the elements of this tort at all. In addition to the D.C.'s tort law does not recognize liability for wrongs a person does not cause, simply put, Roger Stone can comment on

published news. *See Wolf v. Regardie,* 553 A.2d 1213 (D.C.1989); *Paige v. U.S. Drug Enforcement Admin.,* 818 F.Supp 4, 16 (D.D.C. 2010).

Plaintiffs also state that the information in the DNC's emails revealed private facts disclosed publicly. Plaintiff Comer turns this tort on its head. As to Plaintiff Comer and his sexual preference, it is a public fact that was privately disclosed. As to the other Plaintiffs, basic personal information is revealed by the disclosure of the DNC's emails, biographical data is not embarrassing as required by the tort. *Armstrong v. Thompson*, 80 A.3d 177, 189 (D.C. 2013).

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

This Court has stated the law regarding intentional infliction of emotional distress under District of Columbia law is: Defendant's conduct must cause a plaintiff's damages. *Ben-Rafael v. Islamic Republic of Iran*, 540 F. Supp. 2d 39, 56 (D.D.C. 2008) (Huvelle, J.,). The lawsuit does not allege Roger Stone caused the infliction of emotional distress since he did not conspire or aid others to transmit Plaintiffs' emails. Further, Plaintiffs do not allege they were the specific target of the tort. *See Bettis v. Islamic Republic of Iran*, 315 F.3d 325, 331 (D.C. Cir. 2003) (quoting Restatement (Second) of Torts § 46)). Roger Stone's comments on Twitter do not qualify as intentional infliction of emotional distress directed upon Plaintiffs. But again, Plaintiffs seek to make this case about more than themselves. "Defendants conspired with Russian agents and others to undermine an election and the very foundation of our democracy—conduct that … would rightfully arouse shock and outrage." (Opp. 51–52.). Plaintiffs can only seek damages for injuries caused to them, not on behalf of others. The allegations against Roger Stone do not allege he conspired or aided and abetted before the intentional act of disclosure of Plaintiffs emails were disseminated via WikiLeaks. Thus, Plaintiffs have not alleged the elements of the tort intentional infliction of emotional distress.

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

Plaintiffs' federal question claim is for conspiracy to violate civil rights under Title 42 Section 1985(3) by "intimidating eligible voters including Plaintiffs in a manner designed to prevent them from giving [their] support or advocacy in a legal manner, toward or in favor of the election of [a] lawfully qualified person as an elector President and injure Plaintiffs' person and property." (Am. Compl. ¶ 26). In response to the motion to dismiss, Plaintiffs claim Defendants misread the plain language of the statute, misinterpret precedent of the Supreme Court, and fail to recognize the statutory rights inherent in § 1985(3). Plaintiffs wish to expand the civil rights conspiracy statute to encompass dissemination of their emails on the internet by people other than the Defendants. Concentrating on the purpose of Section 1985(3), passed in 1871, it was meant to enforce the provision of the Fourteenth Amendment, Plaintiffs' interpretation of § 1985(3) goes too far. *See* 42 Cong. Ch. 22, Apr. 20, 1871, 17 Stat. 13.

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

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). The substantive right itself must prohibit private conspiracies for it to be covered by the statute. While they do not expressly cite to a federal right or the Constitution, interpreting their claim, Plaintiffs complain they were the subject of a form of intimidation because they supported and advocated for the candidate of their choice. This is a plain description of protections afforded by the First Amendment. If Plaintiffs' complaint is based upon First Amendment protections, then state action is required because the First Amendment is a limit on government. In this lawsuit, neither defendant is a state actor and therefore not covered by this statute.

"[T]he 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. However, the statute provides no substantive rights itself. *Id.* at 372. It is a remedial statute. *Id.* & *id.* at 382. (Powell, J., concurring); *United Broth. of Carpenters & Joiners of Am., Local 610, AFL-CIO v. Scott*, 463 U.S. 825, 833 (1983); *Hobson v. Wilson*, 737 F.2d 1, 51 (D.C.Cir.1984).

Plaintiffs do not cite in their complaint to any constitutional right that they should be vindicated. Plaintiffs, to the contrary, clarify that they believe that §1985(3) is a substantive statute granting an independent cause of action rather than solely a remedial one. (Opp. 60). They endeavored to chop up § 1985(3) and apply different statutory interpretation to meet their needs. (Opp. 61). But the Supreme Court and this Circuit do not; the interpretation of the conspiracy statute remains consistent throughout.

Plaintiffs rely on *Kush v. Rutledge*, 460 U.S. 719, 726 (1983) to support its position. (Opp. 62, 64). *Kush,* however, does not support Plaintiffs' position. *Kush,* analyzed subsection (2) of § 1985 conspiracy statute. *Id.* at 720. The Court recognizes this distinction "because the critical language of § 1985(3) . . . does not apply to the violation of the first part of § 1985(2) alleged in the case." The issue before this Court is whether Plaintiffs are required to demonstrate state action in order to implicate the remedial effect of § 1985(3).

While § 1985(3) was meant to reach private action, it was not intended to apply to all tortious conspiratorial inferences with the rights of others. *Griffin v. Breckenridge*, 403 U.S. 88, 101 (1971). Plaintiffs' interpretation of the statute and precedent turns the statute into a "general federal tort law" a type of tort law the Supreme Court expressly rejected. *Id.* at 102. One of those limits on §1985(3) is that the statute does not stand alone as a substantive statute; it is a statute that provides remedy for constitutional violations.

Plaintiffs' allegations are that they "communicated with each other and with others at the DNC, and made solicited contributions to the DNC, for the purpose of giving support and advocacy. . . ." (Am. Compl. ¶ 242). 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. (Am. Compl. ¶ 246). "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." (Am. Compl. ¶ 247). 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. (Am. Compl. ¶¶ 248, 249). Support and advocacy of a political candidate is speech, it does not matter what form that speech takes. Advocacy, through speech or monetary support is not illegal. *See Citizens United v. Fed. Election Com'n*, 558 U.S. 310, 360 (2010).

In essence, Plaintiffs 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 alleged or could be alleged, Plaintiffs §1985(3) claim must be dismissed.

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

Plaintiffs zoom in and out, expanding and contracting, the alleged purpose or objective of the conspiracy. Plaintiffs have claimed that they were bystanders of a larger conspiratorial purpose, elect Donald Trump and defeat Hillary Clinton. (Am. Compl. ¶¶ 24, 128). They also claim: "The conspiracy was aimed to prevent . . . potential donors from giving concrete financial support to Mr. Trump's opponent." (Opp. 66). Yet, at other times they allege the purpose was to

disrupt the Democratic Party by conspiring to hack and steal data from the DNC servers, and Plaintiffs data was swept up in that purpose. (Opp. 10, 41). They also allege that Plaintiff Comer and other DNC Finance Office employees "were singled out" for publication. (Opp. 53). But in a §1985(3) conspiracy the purpose must be on account of their support and advocacy. Plaintiffs claim a specific violation of Section 1985(3) pertaining to a conspiracy to injure a voter on account of support or advocacy.

To state a claim under § 1985(3), a plaintiff must first show that the defendants conspired—that is, reached an agreement—with one another. *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1868 (2017). "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) (emphasis added). Plaintiffs fail to allege any conspiracy that injured them by overt acts of Roger Stone, as explained in *supra at* 7-14. At best, Plaintiffs correlate allegations with injury. For example, they claim Roger Stone expressed a view or political statement and therefore that means he caused the subsequent events. (Am. Compl. ¶¶145-152). Stone's words, even if he knew WikiLeaks was going to publish DNC data, do not demonstrate that he caused or did some act in furtherance of the release of Plaintiffs' emails. Absent some other allegations of an overt act that he engineered, directed, or assisted in the taking or disseminating of the emails, the Plaintiffs' claim must fail. Plaintiffs' fail in their pleadings to claim "Defendants" (the Campaign and Stone) participated in meetings and calls and do not specifically allege Roger Stone even knew these people let alone met or communicated with them. Plaintiffs fail to plead specific facts that Roger Stone, as opposed to other unspecified agents of the Campaign, knew the purpose of the conspiracy, if one existed, and committed an

overt act in furtherance of the conspiracy which injured Plaintiffs. Even if the Court were to accept that Russians interfered with the election that does not prove a conspiracy with the campaign or Roger Stone. 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.

Roger Stone emphasizes this argument since, as argued above; Stone is being accused of participating in a conspiracy he had not joined, until (at best) the effects on Plaintiffs were achieved and completed. Plaintiffs' injuries have no nexus to Roger Stone, and could not under any § 1985(3) conspiracy, if he is not alleged to have joined the conspiracy before the civil rights violation occurred. If the DNC's emails containing Plaintiffs' emails were disseminated on July 22, 2016, and Roger Stone's first overt act, according to the pleadings, occurred well after that dissemination, then he could not have been a part of the alleged conspiracy that affected Plaintiffs.

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: December 29, 2017

Respectfully submitted,

/s/ Robert Buschel

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CERTIFICATE OF SERVICE

I certify that on December 29, 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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