

October 31, 2022

**BY EMAIL**

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Re: False and Defamatory Statements Concerning *The China Project*

Dear Messrs. Smith:

We represent The China Project (“TCP”). We write regarding Semafor’s October 30, 2022 article titled, *A former employee’s complaint prompts Republican calls to investigate The China Project, an American news company* (the “Article”), published under Ben Smith’s by-line. The Article asserts that “The China Project has been influenced by the Chinese government and is acting as an ‘agent of a foreign principal’ under federal law.” The “Republican calls” for an “investigation” in the headline Mr. Smith traces to a set of so-called “whistleblower” allegations, made in “an 11 page sworn declaration” signed by a journalist who worked at TCP for fewer than three months—more than two years ago.

The Article is false. Mr. Smith, in fact, all but *admits* that Ms. Van Sant’s allegations, his only documented source, are false. Under the subheading “BEN’S VIEW,” Mr. Smith writes, “Van Sant’s declaration **does not contain strong evidence** that the Chinese government has **any** role in The China Project, **and doesn’t claim to**, though her lawyers and the Republican” politicians ask for “an investigation.” As Mr. Smith says in one of the Article’s first paragraphs, Ms. Van Sant’s “incendiary charge directed at [TCP]...is a scarlet letter,” rendering the Article’s republication of it defamatory *per se*. The Article quotes a *Foreign Policy* deputy editor who “said he saw no evidence for the ‘foreign agent’ charge,” and The China Project is “a legitimate part of the debate.”

Despite Mr. Smith’s own statements and those of the *Foreign Policy* editor, the Article reports a supposed “emerging Washington consensus on China that is closer to the view of Van Sant’s lawyers,” who, echoing the “whistleblower” complaint, claim to “belie[ve]” that TCP “should be considered an agent of China.” Thus, after yesterday’s Article, two lawyers and their client may add Mr. Smith’s and *Semafor*’s credibility to the threats of two “leading China hawks” in Congress to use a federal criminal statute aimed at curbing influence-peddling by America’s geopolitical enemies to silence Chinese-American journalists engaged in reporting about China. For nearly 75 years—when Senator Joseph McCarthy targeted supposed Chinese

communists during the Korean War<sup>1</sup>—the First Amendment has consistently protected journalists from precisely this kind of content- and viewpoint-based discrimination because of political “concerns about foreign influence in general and China’s rising power in particular” (quoting the Article). *See, e.g., Texas v. Johnson*, 491 U.S. 397 (1989); *cf. Dennis v. United States* 341 US 494 (1951) (Douglas, J., dissenting). And for more than a century, the First Amendment has absolutely barred government-compelled licensing of speech, *Near v. Minnesota*, 283 US 697 (1931)—here, the obligation to register as a potential U.S. enemy agent.

There is no dispute that the Article, and Ms. Van Sant’s allegations, are false and defamatory and that Mr. Smith and Semafor published with knowledge of such falsity. Before publication, TCP gave Semafor evidence supporting those facts proving that TCP is not an agent of the Chinese government and that it is not “reasonable” to suspect so.

TCP’s reporting frequently criticizes the CCP and China’s government. China’s government has **banned access to TCP’s website** for more than four years. Chinese state media calls TCP “West-backed anti-China organization.”<sup>2</sup> Nothing in Ms. Van Sant’s “sworn declaration” comes close to providing evidence, direct or circumstantial, that TCP is working for or has worked for the Chinese government. TCP provided reams of information showing Semafor that Ms. Van Sant’s allegations are demonstrably false and contradicted by contemporaneous documentary evidence. And though Semafor tries to rehabilitate her credibility by quoting TCP’s reference to her as a “disgruntled former employee” as though it were admitting its own complicity, the facts are indisputable: TCP fired Ms. Van Sant for cause three months after hiring her for reasons explained below. Semafor knew all of this; it nevertheless published the Article on the credibility of a central source whose bias is too obvious to ignore.

“The essence of the tort of libel is the publication of a statement about an individual that is both false and defamatory.” *Pisello v. Town of Brookhaven*, 933 F. Supp. 202, 217 (E.D.N.Y. 1996) (citation and quotations omitted). The key threshold question is the “impression created by the words used as well as the general tenor of the expression, from the point of view of the reasonable person.” *Immuno AG. v. Moor-Jankowski*, 77 N.Y.2d 235, 243 (1991). By these standards, the Article libeled TCP. The same rule applies, as here, where the defamatory message has been characterized by exaggeration, implication or suspicion of wrongdoing. *See, e.g., Levan v. Capital Cities/ABC, Inc.*, 190 F.3d 1230, 240–41 (11<sup>th</sup> Cir. 1999); *St. Surin v. Virgin Islands Daily News, Inc.*, 21 F.3d 1309, 1315–17 (3d Cir. 1994).

Semafor touts itself as “Transparent News,” “in an effort to rebuild trust from our audience.”<sup>3</sup> Mr. Smith told TCP’s Editor-in-Chief Jeremy Goldkorn in an email several days

<sup>1</sup> “In June 1951, McCarthy denounced George Marshall and Dean Acheson as part of ‘a conspiracy so immense’ as to dwarf any other in history, saddling them with responsibility for American weakness and defeats in the face of communism, particularly in China and Korea.” Harvey Klehr, “The Post-War Red Scare,” *Bill of Rights Institute*, <https://www.billofrights institute.org/essays/the-postwar-red-scare>.

<sup>2</sup> <https://www.globaltimes.cn/page/202203/1253885.shtml>

<sup>3</sup> <https://www.semafor.com/about>

before the Article was published, “I promise I’ll be totally transparent with you about what’s in the story, and I also promise that I’ll reflect your point of view here fully, not in some throwaway denial.”

Semafor was not transparent with TCP or Semafor’s readers. For example, TCP provided Semafor many articles it has published that are highly critical of the Chinese government, but Semafor did not mention them. TCP gave Semafor emails with Ms. Van Sant contradicting her claim she was not permitted to write on human rights, but Semafor left these out too.<sup>4</sup> TCP gave Semafor communications with Ms. Van Sant showing that she was not forced to publish, and never did publish, an interview she disliked, but Semafor kept this from its readers and instead left a false impression. Despite assuring TCP that Semafor would not publish Ms. Van Sant’s complaint, it did precisely that, publishing her sworn declaration accusing TCP. Semafor did *not*, however, publish—or even mention—the sworn declaration that Mr. Goldkorn provided Semafor prior to publication directly refuting and disproving her claims.

Given the many times that The China Project has provided Semafor with proof that it is not an agent of the Chinese government, Semafor must have published the Article with knowledge of its falsity, serious doubts about its truth, gross irresponsibility or negligence. *See St. Amant v. Thompson*, 390 U.S. 727 (1968); *Zimmerman v. Al Jazeera Am., LLC*, 246 F. Supp. 3d 257 (D.D.C. 2017). There is no genuine dispute that the allegations Semafor published about TCP are false. Semafor facilitated a xenophobic political attack on a Chinese American-led, New York-based company and is liable for the harm it has caused.

We request that Semafor immediately retract or correct the Article to include the facts that our client provided you proving the allegations are wrong. And we request that Semafor unambiguously state the truth, that the allegations are unsupported by any evidence.<sup>5</sup>

**A. *The China Project* Has an Extensive Record of Criticizing the Chinese Government and Has Been Banned in China for More Than Four Years.**

As our client told you, the allegation that TCP is an agent of the Chinese government or its Communist Party is absurd on its face given TCP’s long track record of publishing material critical of China:

1. In 2018, TCP published one of the first comprehensive guides to the Uyghur internment camps in Xinjiang<sup>6</sup>, and even though much of the Western media has moved on from this story, TCP continues to document it on a regular basis, *e.g.*,

<sup>4</sup> *E.g.*, <https://thechinaproject.com/2020/06/09/until-the-wuhan-virus-hit-the-u-s-was-pulling-away-from-china-and-doing-great-jimmy-lai/> (TCP article by Ms. Van Sant interviewing a critic of Beijing, in which the critic states, “I believe anyone who has lived under communism knows the truth. It’s evil.”)

<sup>5</sup> The China Project reserves all of its rights with regard to the Article and the harm its publication causes.

<sup>6</sup> <https://thechinaproject.com/2018/08/22/xinjiang-explainer-chinas-reeducation-camps-for-a-million-muslims/>

this podcast from September 2022<sup>7</sup>.

2. Ironically, TCP has written at length about Chinese disinformation campaigns<sup>8</sup> targeting the West and Chinese overseas influence efforts<sup>9</sup>.
3. At the beginning of the pandemic, TCP wrote a critical opinion piece predicting that the Communist Party would use COVID to dramatically increase the reach of the surveillance state.<sup>10</sup>
4. TCP often features Uyghur<sup>11</sup>, Hong Kong<sup>12</sup>, and Taiwan<sup>13</sup> voices who are highly critical of the Communist Party.
5. TCP frequently publishes opinion pieces and interviews that are highly critical of Beijing. For some examples from the last two weeks: Get ready for a less stable and less friendly China<sup>14</sup>, After the 20th Party Congress, will Xi stay in power indefinitely?<sup>15</sup>, and After the 20th Party Congress, private business is running scared<sup>16</sup>.
6. TCP has written about online memes comparing President Xi to Winnie the Pooh.<sup>17</sup> Individuals have been jailed in China for posting online such comparisons.<sup>18</sup>

These are only a handful of examples. It defies belief that an agent of China's government would take such positions. Semafor chose not to include these facts in its Article, thereby lending false credibility to Ms. Van Sant's allegations. Mr. Smith had assured TCP that

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<sup>7</sup> <https://thechinaproject.com/podcast/surveillance-state-authors-josh-chin-and-liza-lin-on-their-new-book-on-chinas-tech-enhanced-social-controls/>

<sup>8</sup> <https://thechinaproject.com/2019/08/26/chinese-state-medias-videos-are-slick-and-compelling/>

<sup>9</sup> <https://thechinaproject.com/2019/11/04/is-chinese-thought-work-coming-to-america/>

<sup>10</sup> <https://thechinaproject.com/2020/02/14/the-coming-biosecurity-state/>

<sup>11</sup> <https://thechinaproject.com/2022/06/06/are-uyghurs-different-from-ukrainians-qa-with-rayhan-asat/>

<sup>12</sup> <https://thechinaproject.com/2022/05/27/the-future-of-hong-kong-qa-with-jeffrey-ngo/>

<sup>13</sup> <https://thechinaproject.com/2022/08/09/why-are-taiwanese-people-just-chilling-as-the-missiles-fly-qa-with-william-yang/>

<sup>14</sup> <https://thechinaproject.com/2022/10/21/get-ready-for-a-less-stable-and-less-friendly-china/>

<sup>15</sup> <https://thechinaproject.com/2022/10/24/after-the-20th-party-congress-will-xi-stay-in-power-indefinitely/>

<sup>16</sup> <https://thechinaproject.com/2022/10/28/after-the-20th-party-congress-private-business-is-running-scared/>

<sup>17</sup> <https://thechinaproject.com/2017/07/17/winnie-pooh-wrong-china/>

<sup>18</sup> <https://time.com/5770095/minnesota-student-jailed-tweets/> (student jailed in China for posting image while in the US).

it *would* include these articles, and asked Mr. Goldkorn to send the articles to him. Mr. Goldkorn sent the articles to Mr. Smith by the noon deadline on October 30, 2022 that Mr. Smith requested, but the TCP coverage was not mentioned or cited in the Article.

As TCP also told Semafor, China's government has made clear that it disapproves of TCP's coverage. TCP's website, thechinaproject.com, and its predecessor site, supchina.com, have been banned in China for over four years. Our client provided Semafor with a sworn declaration from Jeremy Goldkorn with proof that TCP is banned in China.

TCP also provided Semafor with evidence that China's English-language state media Global Times has called TCP a "West-backed anti-China organization."<sup>19</sup> Semafor buried this reference in the Article's last sentence despite it contradicting the premise of the allegations against TCP. As our client also showed Semafor, other Chinese state media have suggested TCP is set on fomenting a revolution in China backed by George Soros and the NED, a favorite target of Communist Party attacks.<sup>20</sup> The Article did not even mention this fact.

The allegation that TCP is a Chinese government agent is so "inherently improbable that only a reckless man would have put [the allegation] in circulation." *St. Amant v. Thompson*, 390 U.S. 727, 732 (1968). Semafor's decision to omit from the Article facts proving that Ms. Van Sant's allegations are inherently improbable constitutes knowing or reckless publication of false and defamatory statements of and concerning TCP.

## **B. The Factual Bases Cited in The Article Do Not Support the Inference That *The China Project* is an Agent of the Chinese Government.**

Semafor told TCP that there are two factual bases underlying the claim that TCP is an unregistered Chinese government agent: Ms. Van Sant's "experience" and an item on TCP Board Member Clarence Kwan's LinkedIn page indicating that he served as a director for an organization linked to the Chinese government.

Taking Van Sant's allegations at face value, they cannot reasonably support the allegation that TCP is working for the Chinese government. In an October 26, 2022 email to TCP, Mr. Smith described the following eight allegations that Ms. Van Sant claims show that TCP is an agent for China:

1. Jeremy Goldkorn told her to "model my writing and reporting on 'Sixth Tone.'"
2. She said she wanted to incorporate human rights stories into the biz beat, and Jeremy said she could "once a month."
3. Jeremy told her that [TCP] started publishing Byler in response to some comments

<sup>19</sup> <https://www.globaltimes.cn/page/202203/1253885.shtml>

<sup>20</sup> <https://mp.weixin.qq.com/s/q0vHTIro3aFuHx3khE1EcQ> (in Chinese)

Anla Cheng made to the SCMP.

4. Bob Guterman told Shannon to include in her coverage of the HFCAA the line that “No Chinese company listed in US markets that has been found to be fraudulent has been owned or under the influence of the Chinese government.” She refused.
5. Cheng “directed me to support [Peter Walker],” and said, “You have to help promote Peter Walker’s book.” She said, “Walker is about to give us a lot of money. You have to do the interview.”
6. Jeremy was very critical of her interview with Jimmy Lai during the Hong Kong unrest.
7. On June 15, Cheng told staff that she had spoken to the China Association for Science and Technology in Beijing, and gotten a tip that a Chinese scientist was being wrongly investigated in the Us. She allegedly said, “We have to protect him.”
8. Cheng also mentioned a partnership with VIPKid, which was being criticized for firing American teachers over comments on Taiwan and Tiananmen Square. Cheng said the company was facing official US scrutiny and “we have to help them.”

As TCP explained, none of these items, individually or cumulatively, offer any plausible basis for concluding that TCP is an agent of the Chinese government. None of the items refer to any evidence that China exerts control over TCP. None indicate any exchange of funds or quid pro quo between China and TCP. Most do not refer to the Chinese government or Communist Party of China. Semafor did not disagree.

Many of TCP’s alleged actions are not even supportive of China’s government. For example, TCP allegedly asked Ms. Van Sant, who was hired as a business reporter, to prioritize her business writing. This is not supportive of the Chinese government.

Likewise, the allegation that TCP management was critical of an interview of Jimmy Lai, an opponent of the Chinese government, does not state the basis for that criticism. TCP management set up the interview and published it; they were not opposed to Mr. Lai’s anti-Beijing viewpoint. As Mr. Goldkorn explained to Mr. Smith in an October 26, 2022 email, his criticism of Ms. Van Sant’s interview related to the poor and unimaginative quality of her interview, not the political positions of the interviewee. Similarly, protecting a “wrongly investigated” Chinese scientist is not evidence of espionage; many news organizations have reported on wrongly investigated Chinese scientists in America without those news organization being accused of being secret Chinese agents.<sup>21</sup>

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<sup>21</sup> *E.g.*, <https://www.nytimes.com/2015/05/10/business/accused-of-spying-for-china-until-she-wasnt.html>; <https://www.nbcnews.com/news/asian-america/mit-professor-wrongfully-accused-spying-china-helps-make-major-discoveries-rcna44637>; <https://thehill.com/regulation/court-battles/558345-federal-agents-admit-to-falsely-accusing-chinese-professor-of-being/>.



The other basis Semafor identified for the allegation is a statement on TCP Board member Clarence Kwan's LinkedIn profile stating that he is a director of the China Overseas Exchange Association ("COEA"). Mr. Kwan told Semafor in an October 29 email sent by Mr. Goldkorn on his behalf that his profile is "outdated and has not been updated since early 2015, when [he] spent more than 50 days in the ICU of a New York hospital and then 4 weeks in a rehab center to learn how to rebuild [his] muscles in order to walk again." The Article did not mention this.<sup>22</sup> Mr. Kwan also explained to Semafor that his involvement in COEA was limited to participating in two trips to China in 2013 and 2014. This was before the startup of The China Project, before Mr. Kwan joined TCP's Board, and years before TCP raised funds from public investors. Semafor left many of these facts out of the Article as well.

It is not reasonable to conclude that Mr. Kwan's limited former ties to COEA form a basis for claiming that TCP is an agent of the Chinese government. Even were Mr. Kwan's COEA association more extensive, TCP told Semafor that Mr. Kwan has no control or influence over the editorial content of the organization, nor does he participate in the company's day-to-day business. TCP told Semafor that Kwan's investment in the company accounts for less than 2% of the company's equity. Again, Semafor left these facts out while including the false allegations against him.

**C. *Semafor* Knew That Its Source Had Proffered False Information, Which Must Have Raised Serious Doubts About the Source's Reliability.**

TCP's Editor-in-Chief Jeremy Goldkorn demonstrated to Ben Smith in email correspondence beginning on October 28, 2022 that Ms. Van Sant's allegations are false or misleading. For example, Mr. Goldkorn provided Semafor with email and Slack conversations between Ms. Van Sant and TCP CEO (and former COO) Bob Guterma demonstrating that Ms. Van Sant was not—contrary to her claims—prevented from pursuing human right stories. And Mr. Goldkorn sent Mr. Smith an article on a human rights issue that Ms. Van Sant wrote and published during her brief employment at TCP. Semafor did not include these facts in its Article even while stating that Ms. Van Sant "wanted to write more about Chinese human rights abuses."

Mr. Goldkorn also showed that Ms. Van Sant was not forced to include the line, "No Chinese company listed in US markets that has been found to be fraudulent has been owned or under the influence of the Chinese government" in an article. And indeed, no such article was published. This contradictory evidence was excluded from the Article.

Mr. Goldkorn explained to Semafor in the same email that Anla Cheng encouraged Ms. Van Sant to interview Peter Walker but promised that if they all (including Ms. Van Sant) were not comfortable publishing it, they wouldn't publish it. Again, as TCP told Semafor in an

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<sup>22</sup> The Article incorrectly states that Mr. Kwan "is" a Deloitte executive, citing his LinkedIn profile. As the cited profile shows, Mr. Kwan retired from Deloitte in 2012. Please correct the article to note that he is no longer employed by Deloitte.

October 26, 2022 email, that is precisely what happened: no interview was ever published.<sup>23</sup> But Semafor again kept these facts from its readers, knowingly creating the false impression that TCP published an article it pressured Ms. Van Sant to write. Semafor instead said that TCP’s “response” to the allegation was that the “pressure to write about Walker was less about ideology and more about fundraising.”

Having learned that its source is unreliable, Semafor could not have continued to rely on the information she provided without harboring “serious doubts” as to the truth of the allegations. *See St. Amant*, 390 U.S. at 731 (“Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice.”); *Zimmerman*, 246 F. Supp. 3d at 284 (stating facts could support a finding that defendants entertained “serious doubts” as to source’s credibility) (citing *St. Amant*, 390 U.S. at 732). And by presenting Ms. Van Sant’s false allegations while withholding from its readers evidence it knew disproved her claims, Semafor knowingly or recklessly published false and defamatory statements about TCP.

**D. Semafor Published Ms. Van Sant’s Sworn Declaration But Did Not Disclose The Existence of Mr. Goldkorn’s Sworn Declaration Contradicting Her.**

In an email on October 27, Mr. Goldkorn asked Mr. Smith to share the whistleblower complaint with TCP so that it could better respond. Mr. Smith declined to share the complaint or any part of it with TCP. In a phone conversation on October 29, Mr. Smith told Mr. Goldkorn that he would not be publishing Ms. Van Sant’s complaint. Despite these assurances, Semafor published the entirety of Ms. Van Sant’s sworn declaration in the Article.

Semafor knew that Ms. Van Sant is a biased source. Semafor further knew that TCP was able to demonstrate that her allegations are false when presented with the opportunity to do so. Yet, Semafor published Ms. Van Sant’s declaration in its entirety without giving TCP any opportunity to comment on or respond to the vast bulk of its contents.

Semafor’s reckless disregard for the truth is further demonstrated in its decision to publish Ms. Van Sant’s declaration while not publishing, or even mentioning, that Mr. Goldkorn provided Semafor with a sworn declaration on October 30, 2022 refuting Ms. Van Sant’s allegations. In addition to rebutting her allegations, Mr. Goldkorn’s declaration attached evidence that the Chinese government has banned TCP in China. The Article only quotes TCP as *saying* that it has been banned in China, creating the false impression that this is a debated assertion rather than undisputed fact.

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<sup>23</sup> Mr. Goldkorn explained in his email to Mr. Smith, “We never published any interview with Peter Walker, nor did I ever instruct her to do one. Furthermore, while Walker’s book may be pro-Beijing, he is not, as far as I am aware, an agent or employee of the CCP. Anla did introduce the idea of interviewing Walker to Shannon, but I have it in writing that Anla was waiting to hear from Shannon if she was willing to do it. Ms Van Sant’s claim that she was required to do the interview is either an outright lie or misremembered. Specifically, Anla’s email to Shannon on the matter says that if after the interview we’re not all happy with it, we can kill the piece.”



**E. No Applicable Legal Privilege Protects Semafor's Republication of Falsehoods in the Alleged Whistleblower Complaint.**

Semafor's publication of false and defamatory statements of and concerning TCP in the Article is protected by no legal privilege. Semafor cannot escape liability by merely reporting that a third party like Ms. Shannon or Senator Rubio—as opposed to Semafor itself—has accused TCP of being an unregistered foreign agent of the Chinese Communist Party.<sup>24</sup> See *Cianci v. New Times Pub. Co.*, 639 F.2d 54, 60–61 (2d Cir. 1980) (noting the “widely recognized” rule that a party that republishes a libel is subject to liability even if it attributes the libelous statement to the original publisher and expressly disavows the truth of the statement).<sup>25</sup>

Whatever outreach Ms. Van Sant made to the U.S. government, it has not led to any reportable event. No investigators or law enforcement ever contacted TCP. No legal privilege applies to publication of a private person's non-public report to the government. For example, a reportage defense does not apply to “investigative reporting,” where, as here, “no controversy raged around the libelous statement before the reporter entered the scene.” *McManus v. Doubleday & Co., Inc.*, 513 F. Supp. 1383, 1391 (S.D.N.Y. 1981).

Semafor also could not succeed with a “fair report” defense. Such a defense applies to reports of official proceedings or public meetings—not to a private individual “whistleblower report” to the government. See, e.g., *Wynn v. Smith*, 117 Nev. 6, 15 (2001) (holding that “unauthorized or confidential investigatory reports do not qualify as an ‘official action or proceeding’ under the fair report privilege”); *Schiavone Const. Co. v. Time, Inc.*, 847 F.2d 1069, 1086 n.26 (3d Cir. 1988) (“We are skeptical whether the unauthorized leak of a confidential FBI document qualifies as an ‘official action or proceeding’ under the Restatement as interpreted by New Jersey law.”). The purpose of the defense “is to obviate any chilling effect on the reporting of statements already accessible to the public.” *Wynn*, 117 Nev. at 15–16. Semafor's allegations are not “already accessible to the public” and thus do not fit that purpose. Indeed, courts have expressed “serious doubt” that the “unauthorized leak of a confidential FBI

<sup>24</sup> *Martin v. Wilson*, 497 A.2d 322 (R.I. 1985) is particularly instructive on this point. In that case, a newspaper published statements that townsfolk were speculating that plaintiff was connected to a rash of local fires, while also noting that local fire officials believed others were responsible. *Id.* at 325. The lower court charged the jury that plaintiff must prove that there were no such rumors. *Id.* The Supreme Court of Rhode Island reversed, stating that the appropriate inquiry was not whether such rumors existed, but whether the rumors were based upon fact or were false. *Id.* at 327. In other words, where a newspaper publishes third-party statements that speculatively accuse someone of wrongdoing, the fact that the publisher attributes them to a third party and qualifies those statements by stating that they were only speculative is not a defense to liability.

<sup>25</sup> See also *Olinger v. Am. Sav. & Loan Ass'n*, 409 F.2d 142, 144 (D.C. Cir. 1969) (“The law affords no protection to those who couch their libel in the form of reports or repetition. . . . [T]he repeater cannot defend on the ground of truth simply by proving that the source named did, in fact, utter the statement.”), cited in *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1248 (D.C. 2016); see also *Zimmerman v. Al Jazeera Am., LLC*, 246 F. Supp. 3d 257, 264 (D.D.C. 2017) (holding that producers of documentary could themselves be liable for defamation where they aired a third party's false accusation of criminal activity). Nor can Semafor avoid liability by qualifying that the alleged conduct only “possibly” was criminal. See, e.g., *Gross v. New York Times Co.*, 623 N.E.2d 1163, 1168 (N.Y. 1993) (finding publisher's statement that plaintiff engaged in “possibly illegal” conduct to be actionable defamation).

document” could qualify as an “official action or proceeding” triggering the “fair report” defense, including because “[s]uch leaks could become powerful tools for injuring citizens with impunity.” *Schiavone*, 847 F.2d at 1086 n.26.<sup>26</sup>

Nor can Semafor rely on the qualified privilege that permits an individual to make private statements to law enforcement to protect his property interests. *See Singer v. Harris*, 2016 WL 10489850, at \*6 (E.D. Ark. July 13, 2016) (qualified privilege may protect good-faith statement on subject in which “the person making the communication has an interest or in reference to which he has a duty, and to a person having a corresponding interest or duty”; privilege is lost “if it is abused by excessive publication”), *aff’d*, 897 F.3d 970 (8th Cir. 2018). Semafor’s publication would not be private, it would not be a communication to law enforcement, and Semafor has no relevant interest or duty. Moreover, if Ms. Van Sant believed she had a qualified privilege when she made her alleged whistleblower report, that may have emboldened her to make allegations that are inaccurate.

**F. Semafor Knew That Its Source Had an Ulterior Motive for Harming *The China Project*.**

Semafor published the Article with knowledge that its source had a motive to lie or misdirect. Semafor knew that its source, Shannon Van Sant, has an axe to grind. As TCP has told Mr. Smith, Ms. Van Sant was fired by TCP more than two years ago for her poor work performance after less than three months on the job. Semafor was therefore required to test its source with an additional level of scrutiny. *Harte-Hanks Commc’ns, Inc. v. Connaughton*, 491 U.S. 657, 692 (1989) (Disregarding source’s bias and failing to further verify constituted actual malice).

**G. The Article Falsely States, With No Support, That There Is An “Emerging Washington Consensus” That “The China Project Should Be Legally Considered an Agent of China.”**

The Article states, “[t]he emerging Washington consensus on China is closer to the view of Van Sant’s lawyers, Andrew Bakaj and Kyle Gardiner, who wrote that there is ‘reasonable belief’ that The China Project should legally be considered an agent of China.” Semafor cites no factual support for this statement. The Article identifies no one in Washington other than Senator Marco Rubio and Representative Chris Smith who support Ms. Van Sant’s false allegations against TCP.

Semafor’s claim about an emerging consensus in Washington is false and defamatory, made with knowledge of, or in reckless disregard of, its falsity. We ask that you immediately

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<sup>26</sup> The *Schiavone* court further explained, “[T]he Webster memorandum was not in the public sphere until Smith unearthed it and Time published it. By publishing such confidential documents about individual citizens, Time brought to light new and potentially defamatory information that the government had no intention of releasing—at least not in the form edited by Time.” *Schiavone*, 847 F.2d at 1086 n.26.

issue a correction for this false statement in a manner at least as prominent as its original publication.

#### **H. The Article Impermissibly Relies on Racial Profiling and Stereotypes.**

TCP is led by Americans of Chinese descent, including Anla Cheng. Ms. Cheng is mentioned seven times in the Article; Bob Gutera, the company's CEO who is also identified in Ms. Van Sant's declaration (e.g., ¶¶ 18, 29, 37), is not mentioned once. As Mr. Goldkorn said to Mr. Smith in an email on October 29, 2022, "Shannon is at Politico now. If she had the same experiences at Politico as what she described in her complaint, do we really think she would report them for being Chinese foreign agents?"

Semafor is aware of the well-reported higher incident of accusations of espionage against Chinese Americans.<sup>27</sup> Accusations of dual loyalty are arguably at an all-time high.<sup>28</sup> A recent study showed that Americans of Asian descent facing espionage-related crimes are more than twice as likely as similar Western defendants to never be convicted of the alleged crimes, concluding that Asian defendants are more than twice as likely to be falsely accused of espionage.<sup>29</sup>

A story reporting that a well-respected media organization with a Board comprised of two Chinese Americans is accused of harboring secret allegiance to the CCP taps into a destructive trope about Chinese Americans. Such stereotypes should have led Semafor to be particularly skeptical of the accusations in the whistleblower report and cautious in feeding such a harmful narrative about Chinese Americans. But the Article did not even acknowledge this obvious problem.

As Senator Rubio said in a March 17, 2021 tweet:

***Asian-Americans are AMERICANS. They have nothing to do with a repressive Communist Party or with a virus that originated 7000 miles away on the other side of the world. Anyone without enough common sense to understand that is an idiot.***

\* \* \* \* \*

Since Semafor first contacted TCP earlier this week, the company tried in good faith to help Semafor report robustly and accurately about TCP. TCP marshalled internal resources quickly to get Semafor relevant primary source information and sources. TCP did not know then that Semafor intended to exclude from the Article the facts that did not fit its predetermined

<sup>27</sup> <https://www.cnn.com/2021/12/30/asian-american-groups-call-on-biden-to-end-controversial-china-initiative.html>

<sup>28</sup> <https://www.worldpoliticsreview.com/amid-china-us-tensions-dual-loyalty-rears-its-ugly-head/>

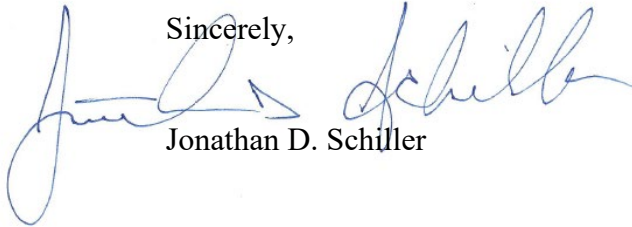
<sup>29</sup> <https://www.committeel00.org/wp-content/uploads/2021/09/FINAL-Press-Release-EEA-research-.pdf>

narrative. *See Palin v. New York Times Co.*, 940 F.3d 804, 813 (2d Cir. 2019).

Throughout this prepublication engagement, our client's only request was that Semafor include TCP's factual response within the Article and unambiguously state that there is no evidence the allegations are true. Semafor did not do this. Instead, Semafor published false statements knowing that they are false or in reckless disregard of their falsity. As such, Semafor is liable for defamation under the law.

We request that Semafor immediately retract or correct the Article to include the facts that our client provided Semafor proving the allegations are wrong. We further request that Semafor correct the Article to state that the allegations are unsupported by any evidence.<sup>30</sup> We hope you can appreciate that we need a prompt response to this request; the Article is already causing harm to this small, New York-based startup company. We therefore request a response at your earliest convenience, but no later than 1pm EST tomorrow, November 1, 2022.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jonathan D. Schiller', is written over the typed name.

Jonathan D. Schiller

cc: Jonathan Sherman, Esq. ([jsherman@bsfllp.com](mailto:jsherman@bsfllp.com))  
Joseph F. Kroetsch, Esq. ([jkroetsch@bsfllp.com](mailto:jkroetsch@bsfllp.com))

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<sup>30</sup> If you contend there is evidence supporting the allegations about TCP, such evidence has never been described or shown to our client and was not included or referenced in the Article.