

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

	/	
GUO WENGUI a/k/a MILES KWOK,	:	Index No.: 157538/2019
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
STRATEGIC VISION US LLC, J. MICHAEL	:	
WALLER, FRENCH WALLOP, EDWARD	:	
GREIM, DOW JONES & COMPANY, INC.,	:	
ARUNA VISWANATHA,	:	
and KATE O'KEEFE,	:	
	:	
Defendants.	:	
	:	
	/	

**DEFENDANT'S MOTION TO DISMISS**

PLEASE TAKE NOTICE, that upon the following Statement of Relevant Facts and Arguments, sworn to on the 25<sup>th</sup> day of October, 2019, and together with all pleadings and proceedings heretofore had herein, the *pro se* Defendant, J. Michael Waller, will move this Court, at the Motion Submission Part, Room 130 of the courthouse located at 60 Centre Street, New York, New York on the **22<sup>nd</sup> day of November, 2019**, at 9:30 a.m., or as soon thereafter as counsel may be heard, for an Order dismissing the Complaint as asserted against him pursuant to (a) New York CPLR Section 3211(a)(7) and adopts arguments concerning defamation, truth, malice, and jurisdiction, asserted by his fellow defendants, by incorporation and reference as if asserted on his behalf.

Further, under CPLR 3211(a)(1), Defendant seeks dismissal of the complaint because documentary evidence of any sort supporting Plaintiff's requests for damages is totally lacking. Plaintiff expressly does not waive assertion of any affirmative defenses to the allegations of the Complaint through filing of this Motion. Defendant also seeks that the Court award him costs, fees, and disbursements together with such other and further relief as this Court deems just and proper.

In support thereof, the Defendant states as follows:

### **PRELIMINARY STATEMENT**

I am presently a *pro se* defendant in the above matter, with limited resources. The plaintiff, Guo Wengui ("Guo") a/k/a Miles Kwok, is a Chinese billionaire who built his fortune with a top official of the Ministry of State Security (MSS) of the People's Republic of China.<sup>1</sup> The MSS is the internal political police and foreign intelligence service of China. Guo describes his former patron, former MSS deputy minister Ma Jian, responsible for Chinese foreign intelligence, as his "good friend" with whom he maintains contact.<sup>2</sup>

Guo settled in Manhattan in early 2017 and applied for political asylum in the United States. He files suits against seemingly anyone who opposes the Chinese Communist Party and criticizes him or questions his *bona fides* as a Chinese "dissident."

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<sup>1</sup> "Defendant Strategic Vision US, LLC's Answer and Counterclaims to Second Amended Complaint," *Eastern Profit Corporation Limited vs. Strategic Vision US LLC*, United States District Court for the Southern District of New York, Case No. 18-cv-2185, ¶53

<sup>2</sup> Guo Wengui, *Deposition of Wengui Guo [sic] In the Matter of Guo Wengui vs. Yeliang Xia*, USDC E.D. Virginia, 1:18-cv-174 "Exhibit A," p. 75:6-10.

To my knowledge, Guo has filed at least 16 such suits over the past 22 months in this Court and other state and federal courts across the United States.<sup>3</sup>

Guo stated in a deposition that, by June, 2019, he had filed “perhaps 20 or 30” lawsuits as a plaintiff. “In fact, that even now currently there is still tons of them are being in the process of it,” he added, saying, “some of them I was actually a defendant.”<sup>4</sup> Shortly before filing this lawsuit, Guo stated on video that he intends to use the American legal system as his “battlefield” to ruin the lives of people who criticize him.<sup>5</sup>

Guo is a public figure but has not pled any evidentiary facts showing “actual malice” or reckless disregard for the truth as required to establish a defamation claim in these circumstances. Through social and traditional print media, Guo has thrust himself repeatedly into the public eye as an international political activist. As a public figure, Guo must plead *facts*, not legal conclusions, showing that I made allegedly defamatory statements knowing they were false or with reckless disregard of their truth or falsity. New York courts routinely dismiss complaints, like the Plaintiff’s, that fail to plead actual malice at the outset. Indeed, the important free speech principles at stake demand rigorous scrutiny of Guo’s allegations—and a swift dismissal—where, as here, he has not pled *any* (let alone adequate) facts showing actual malice.

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<sup>3</sup> In addition to this present case, see *Guo Wengui vs. Xianmin Xiong*, Sup. Ct., N.Y. County, 151430/2018; *Guo Wengui vs. Baosheng Guo, et al.*, Sup. Ct., N.Y. County, 121251/2019; *Guo Wengui vs. Dow Jones et al.*, Sup. Ct., N.Y. County, 157358/2019; *Guo Wengui vs. Yeliang Xia*, E.D., Va., 18-cv-174; *Guo Wengui vs. Hongkuan Li*, D. Md., 18-cv-00259; *Guo Wengui vs. Biao Teng*, D., N.J., 18-cv-02110; *Guo Wengui vs. Jianbin Yuan*, C.D., Cal., 18-cv-02276; *Guo Wengui vs. Jianbin Yuan*, Cal. Super. Ct. L.A. Cty., BC720420, 2018; *Guo Wengui vs. Jun Chen a/k/a Jonathan Ho*, D., N.J., 18-cv-03900; *Guo Wengui vs. Yudan Lin*, 11<sup>th</sup> Judicial Dist., Lexington, S.C., 2018CP3203623; *Guo Wengui vs. Yudan Lin*, D., Columbia, S.C., 18-cv-02982; *Guo Wengui vs. Baosheng Guo*, E.D., Va., 18-cv-01064; *Guo Wengui vs. Shuiyuan Chen and Yong Fang*, D., Nev., A-18-779172-C; *Guo Wengui vs. Sinclair Broadcasting Group and Jay O’Brien*, S.D., Fla., 19-cv-81099; *Guo Wengui vs. Sinclair Broadcasting Group and Jay O’Brien*, USDC S.D. Fla., 19-cv-23224; *Guo Wengui vs. McClatchy Company, et al.*, S.D., Fla., 19-cv-23232; and *Guo Wengui vs. Warner Media and Erin Burnett*, S.D., Fla., announced but not filed.

<sup>4</sup> Guo Wengui, *Deposition*, “Exhibit A,” p. 80:5-11.

<sup>5</sup> See Guo Wengui video with English subtitles, July 3, 2019, <http://jmichaelwaller.com/wp-content/uploads/2019/10/Guo-Wengui-vowed-to-use-the-court-as-his-battlefield.mp4>.

Not one of the statements pled in the Complaint is even arguably defamatory or otherwise actionable under controlling legal and constitutional principles. Thus, the legal inadequacy of Guo's allegations goes beyond a mere pleading deficit.

Furthermore, the suit lacks jurisdiction, as I am not a resident of the state of New York, do not own property in New York, and do not do business in New York. My statements that Guo cited in his Complaint were statements that I made in the District of Columbia, directed at general audiences worldwide, and not directed at audiences in New York.

For these and other reasons explained in the Statement of Relevant Facts, I ask the Court to dismiss Guo's Complaint against me with prejudice.

### **STATEMENT OF RELEVANT FACTS**

#### **A. Guo Has Admitted to Being a Public Figure**

Guo is a self-proclaimed political "dissident" and "most" outspoken critic of the Chinese Communist Party ("CCP"), who has filed defamation litigation in courts across the country against those who dare to question on social media his supposed commitment to the anti-communist cause. *See* Compl. ¶¶2, 27-28, 37-39 & nn.2-3.<sup>6</sup>

In other litigation, Guo has *admitted* to being a limited purpose public figure. *See* Pl.'s Opp. To Def.'s Special Motion to Strike at 6-7, *Guo v. Jianbin Yuan*, No. BC720420 (Cal. Super. Ct. L.A. Cty. Nov. 19, 2018). The court in that case *agreed* with Guo on that point, finding that

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<sup>6</sup> The two cases referenced in Guo's complaint are *Guo Wengui v. Xia Yeliang*, No. 18-cv-174 (E.D. Va.), and *Guo Wengui v. Li Hongkuan*, No. 18-cv-259 (D. Md.). In another case pending in this Court, in one of many cases involving Guo pending in this Court, he claimed to have received "worldwide" attention in traditional print media for his purported "whistleblowing activities." *See Guo Wengui a/k/a Miles Kwok, et al. v. Sam Nunberg, et al.*, Index No. 162069/2018, NYSCEF Doc. No. 4, at ¶ 23 ("Plaintiff's whistleblowing activities have garnered significant media attention and support from around the world. He has been interviewed by many leading newspapers worldwide, including the New York Times, Wall Street Journal, and other international publications").

Guo was a limited purpose public figure for “tweets about Plaintiff (Guo) linking him to corruption, lying, and spying”—and noting “Guo’s credibility is an issue of interest to a substantial number of people” given all the national news interest as to “whether his allegations about China’s government are true.” *See* Minute Order at 3-4, *Guo v. Jianbin Yuan*, No. BC720420 (Cal. Super. Ct. L.A. Cty. Dec. 6, 2018).

Guo’s publicity seeking is well established<sup>7</sup> and likely will be addressed in depth by other parties to this case, and thus I will not belabor the point here.

### **B. Guo Built His Fortune With the Chinese Security and Intelligence Service**

Guo claims to have become a multi-billionaire in the years since he was released from jail in 1991, despite his limited education. He has claimed to be “very good friends” with then-Chinese Ministry of State Security vice minister Ma Jian, under whom Guo built his fortune.<sup>8</sup>

Ma Jian and the MSS were the keys to Guo’s accumulation of incredible wealth in a very short time, in a country where financial success is invariably intertwined with Communist Party or secret police connections. “Guo’s protector, beginning in about 2004, was Ma Jian, vice minister of the Ministry of State Security (‘MSS’) until Ma’s arrest . . . in December 2014 after losing an intra-Party power struggle.”<sup>9</sup>

A New York Times reporter who interviewed Guo extensively says that Guo started “making real political connections when he was in Hunan,” a province in eastern China. “[H]e

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<sup>7</sup> *See, e.g., Lauren Hilgers, The Mystery of the Exiled Billionaire Whistle-Blower*, The New York Times Magazine (January 10, 2018), <https://www.nytimes.com/2018/01/10/magazine/the-mystery-of-the-exiled-billionaire-whistleblower.html> and Ben Schreckinger, *How a Renegade Chinese Billionaire Became a Center of D.C. Intrigue*, Politico (June 7, 2019), <https://www.politico.com/story/2019/06/07/guo-wengui-chinese-billionaire-1356594>.

<sup>8</sup> Guo Wengui, *Deposition*, “Exhibit A,” p. 75:6-7.

<sup>9</sup> “Defendant Strategic Vision US, LLC’s Answer and Counterclaims to Second Amended Complaint,” *Eastern Profit Corporation Limited vs. Strategic Vision US LLC*, United States District Court for the Southern District of New York, Case No. 18-cv-2185, ¶53.

then, from what we understand, he did get to start meeting some people in the security apparatus [Wu] Guanzheng and then Ma Jian then came on after him, and he moved from Hunan to Beijing. And from there he started developing his properties. Getting the Pangu [Guo's former prize seven-star retail, residential, and office complex by the Beijing Olympic village] was pretty bare knuckles," according to Mike Forsythe of the New York Times.<sup>10</sup> "He makes no bones about it that his political patron is Ma Jian, who is the vice minister of state security, or was. . . . Those things are a pretty straightforward part of the record."<sup>11</sup>

This is a vital connection to understand. Entrepreneurs in China need a political patron to succeed. The MSS is China's internal security and foreign intelligence service, responsible for political repression at home and espionage abroad. "One of Ma's duties was to run the MSS's No. 8 Bureau, which was in charge of counterintelligence against foreign targets, including diplomats, businessmen, and reporters. The MSS has a role not only in repressing domestic political dissent, but also in monitoring and suppressing activities overseas that are deemed to be subversive of the Chinese Communist Party. This includes overseas dissidents, who the CCP views as traitors to China."<sup>12</sup>

"He talks about Ma all the time, and he always speaks about Ma in terms of reverence and respect, which is pretty rare for him."<sup>13</sup> His relationship is so close to Ma Jian that Guo claimed to the New York Times that his daughter "went to New York University with Ma Jian's daughter."<sup>14</sup>

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<sup>10</sup> Mike Forsythe and Alexandra Stevenson of the New York Times in podcast "Guo Wengui: The Extraordinary Tale of a Chinese Billionaire Turned Dissident," Sinica Podcast, July 19, 2017, from 8 minutes, 2-30 seconds, <http://www.chinafile.com/library/sinica-podcast/guo-wengui-extraordinary-tale-of-chinese-billionaire-turned-dissident>.

<sup>11</sup> *Ibid.*, at 9 minutes, 00-45 seconds.

<sup>12</sup> *Ibid.*, ¶53.

<sup>13</sup> Forsythe, podcast discussion, from 20:23-21:56.

<sup>14</sup> Mike Forsythe and Alexandra Stevenson of the New York Times in podcast "Guo Wengui: The Extraordinary Tale of a Chinese Billionaire Turned Dissident," Sinica Podcast, July 19, 2017, referenced in item 19

The Strategic Vision counterclaim stated that Guo was a “long-time employee of Vice Minister Ma Jian,” and that “Guo paid MSS officials and bought surveillance equipment for the MSS in exchange for favors. Guo was able to use his connection with Ma and the MSS against its own targets in China.”<sup>15</sup> In intelligence parlance, Guo’s two-way relationship with the MSS made him a Chinese intelligence “asset.” A Central Intelligence Agency (CIA) glossary defines “asset” as “A person with a formal relationship characterized by a witting agreement and a degree of commitment and control and who provides information or services.”<sup>16</sup>

In common American English as defined by Webster’s, an intelligence asset is defined as “spy.”<sup>17</sup>

“Guo said he paid money to Ji [Shengde, former Chinese People’s Liberation Army military intelligence chief] as part of China’s use of businesses to support intelligence activities,” according to journalist Bill Gertz, a veteran intelligence reporter. Guo said that he was not a defector to the United States, meaning that Guo did not switch loyalties from the MSS.<sup>18</sup> Therefore, it is safe to say that Guo Wengui is a Communist Chinese spy.

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of written text, <http://www.chinafile.com/library/sinica-podcast/guo-wengui-extraordinary-tale-of-chinese-billionaire-turned-dissident>. In the podcast, Forsythe calls it “kind of odd” that Chinese authorities allowed Guo’s wife and daughter to leave China to join Guo if Guo was really an enemy of the Communist Party. On podcast at 31:52-32:55.

<sup>15</sup> *Ibid.*, ¶54.

<sup>16</sup> Central Intelligence Agency, “Glossary of Terms: The California Story,” <https://www.cia.gov/library/reports/general-reports-1/cocaine/report/glossary.html>

<sup>17</sup> Merriam-Webster dictionary, “Definition of asset,” <https://www.merriam-webster.com/dictionary/asset>

<sup>18</sup> Bill Gertz, “China’s Intelligence Networks in United States Include 25,000 Spies,” Washington Free Beacon, July 11, 2017, <https://freebeacon.com/national-security/chinas-spy-network-united-states-includes-25000-intelligence-officers/>. In October, 2019, the Free Beacon terminated Gertz, a senior editor, for having “entered into a previously undisclosed financial transaction with an individual or an affiliate of that individual whom Mr. Gertz had covered in some of his reporting.” That individual was said to be Guo Wengui. “A Note to Our Readers on the Departure of Bill Gertz,” Washington Free Beacon, October 11, 2019, <https://freebeacon.com/uncategorized/a-note-to-our-readers-on-the-departure-of-bill-gertz/>.

### **C. Guo Spoke of His “Operation” Against Chinese Dissidents in the U.S.**

Some spies run operations against adversarial targets. On March 5, 2017, Guo engaged in a recorded conversation stating he had begun an “operation” against Chinese political dissidents in the New York City area. “They are against our country, against our government, and against our party,” Guo said – an important triple possessive plural that showed loyalty to the Xi Jinping regime and the CCP. That wasn’t the talk of a dissident. “I can take these bastards down and help our leaders to revenge,” said Guo, admitting willingness to serve as an agent of influence in the United States for the CCP leadership. Chinese dissidents in America “never say anything good about China. They attack our CPC [sic] central leaders . . . They deserve to DIE! So these people, I must teach them a lesson.”<sup>19</sup> Guo was thus announcing he would execute Chinese regime operations against Chinese dissidents in the United States.

### **D. Guo Urged MSS to Take His Own Wife and Children to China, and Execute His Employees and Niece**

Guo claims not to be an agent of the Chinese Communist Party. However, public videos of his interaction with senior CCP and MSS officials tell a different story. He had tried to make deals with the CCP and MSS in order to get the regime to return him billions of dollars in seized property due to his ties with the fallen Ma Jian.

In May, 2017, Guo received MSS Deputy Minister Sun Lijun, MSS Secretary for Discipline Inspecting Liu Yanping, and CCP Politburo member and Central Disciplinary

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<sup>19</sup> Guo Wengui, video of audio recording, with English subtitles, posted on YouTube, April 29, 2017, <https://youtu.be/whKwuLpKbUQ>. See Strategic Vision US, LLC, “Defendant Strategic Vision US, LLC’s Answer and Counterclaims to Second Amended Complaint,” *Eastern Profit Corporation Limited vs Strategic Vision US, LLC*, United States District Court for the Southern District of New York, Case No 18-cv-2185, July 19, 2019.

Committee Secretary Meng Jianzu in his Manhattan residence, in which they bargained over the terms by which he would stop exposing Communist Party officials. He was in an intra-CCP battle, not an opponent of the regime, negotiating to get his confiscated property back and return to China. “I have not broken my promise, not even once,” Guo told the Chinese officials. “I have not done a single negative thing.”<sup>20</sup> Unlike any dissident, Guo told Liu that he would “make my wife and children go back to Beijing.”<sup>21</sup> Guo showed even less sympathy for his employees in Chinese police custody. “If my employees are guilty,” Guo said in the recording, “convict them. You can even execute them by firing squad.”<sup>22</sup> He cared as little for his own niece, Guo Lijie, telling the MSS officials, “It’s up to you if you want to execute Guo Lijie by firing squad. Just do it.”<sup>23</sup>

#### **E. Guo Pledged Loyalty to, and an Agency Relationship with, Chinese Communist Party Leader Xi Jinping**

Ten days before applying for political asylum in the United States, on August 26, 2017, Guo Wengui made a written statement of loyalty to Chinese Communist Party Chairman Xi Jinping. He addressed Xi by his Party title, and stated in a servile manner that he would maintain an agency relationship with the Chinese leadership as a “propagandist” for the Xi regime.<sup>24</sup>

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<sup>20</sup> Guo Wengui, two-part audio recording with Sun Lijun, Yanping Liu, Meng Jianzu, and another Chinese official at Guo’s residence in New York, May 24, 2017. See:

<https://www.youtube.com/watch?v=tK66kRrWTEY> (time approximately 42:18-42:29); and audio 2: <https://www.youtube.com/watch?v=zycUy8xlxSM>.

<sup>21</sup> *Ibid.*, 43:00-43:19.

<sup>22</sup> *Ibid.*, 43:37.

<sup>23</sup> *Ibid.*, 44:46.

<sup>24</sup> Guo Wengui, written and signed statement, August 26, 2017, court certified translation in English, Exhibit 5 from *Guo Wengui vs. Xianmin Xiong*, Sup. Ct., N.Y. County, 151430/2018, attached here as “Exhibit B.” Also entered into evidence in *Weican Meng vs. Guo Wengui*, Sup. Ct., N.Y. County, Case No. 159636/2017.

Significantly, Guo repeatedly referred to Xi deferentially as “Chairman” – one of Xi’s Communist Party titles – and not as the non-political state title of “President.” Using the third person as is his custom, Guo specifically discussed a tightly controlled agency relationship with Xi Jinping. “In order to carry out your instruction letter, I pray that you clarify what Wengui are [sic] not allowed to speak about and what Wengui are [sic] permitted to do. Please also provide me with detailed instruction with particular reference to public statements I may make to the media. To avoid any misunderstanding, please give me detailed instructions, in writing,” Guo said.

Guo told Xi that whatever criticisms he made of China while in the United States, “I still kept the faith with you and in the organization so I did not cross the red line when I was forced to give out for interviews.” Guo said that while in New York, “I have had to do things against my will. Am doing the best I can under difficult circumstances to safeguard our nation’s interests and image.”

Guo said that he was pleased to have received a MSS Deputy Minister Sun Lijun and CCP Politburo member and CCP Central Disciplinary Committee Secretary Meng Jianzu in his Manhattan home the previous May: “With humility and sincerity, I greatly valued the opportunity that was given me by Deputy Secretary Sun Lijin and Secretary Meng Jianzu and other leaders. I will put our national interests first and I am willing to devote my life to protecting our nation’s interests, to defend Chairman Ji Jinping’s Value as our nation’s Core Faith and make ultimate dedication of myself to safeguard Chairman Xi Jinping!”

Guo submitted himself to Xi’s will: “I pray that you and related leaders trust me: even under such a difficult circumstances [sic], if needed, Wengui will still continue making contributions to Chinese nation. I will continue not to cross the red line.”

The Plaintiff then made seven requests of Xi Jinping, which included: “Give Wengui an opportunity to chant for our nation in advocating our nation’s legal system solely for propagandizing Chairman Xi Jinping’s call for the Rule of Law in China”; a request “to convert Wengui’s influence and resources momentarily into best serving Chairman Xi Jinping’s China Dream,” and a request for “more space and expanded opportunity to propagandize to [the] international community to encourage me to advocate Chairman Xi Jinping’s great achievements . . . using my own style of propaganda to be presented on [the] international stage.” Guo suggested that Chinese authorities “make the best use of me – I’ll be [sic] completely obey orders given to me at their disposal – so that to serve Chairman Xi Jinping’s agenda and that of our nation!” Again, he asked, “Assign me tasks to accomplish in furtherance of our national interests initiate and engage in Chairman Xi Jinping’s global strategy, so that I can redeem myself by my good service, demonstrating my patriotism and loyalty to Chairman Xi Jinping!”<sup>25</sup>

Guo discussed his letter to Xi in a video interview on Mingjing TV, which displayed the letter while Guo read portions of it aloud.<sup>26</sup>

Eleven days after signing the letter, on September 6, 2017, Guo Wengui applied for political asylum in the United States.<sup>27</sup>

But when asked about it in English for American courts, Guo appeared to suffer a memory lapse. He was asked in a 2019 deposition, “Did you, in fact, endorse that letter, the August 26, 2017, letter?” First Guo said under oath that the letter was fake, or in his words,

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<sup>25</sup> See Exhibit B.

<sup>26</sup> See the interview on [https://youtu.be/7qVmEsw\\_ZX8](https://youtu.be/7qVmEsw_ZX8) and <https://youtu.be/Bf2huTkYzs>.

<sup>27</sup> “Exiled Chinese Tycoon Guo Seeking Asylum in U.S.,” Reuters, September 7, 2017. <https://www.reuters.com/article/us-china-corruption-tycoon/exiled-chinese-tycoon-guo-seeking-asylum-in-u-s-idUSKCN1BI0Y6>

“definitely familiar, fabricated material.”<sup>28</sup> Then Guo said he could not read it: “I find this letter illegible, so I cannot confirm this is that letter. . . .”<sup>29</sup> Finally, he admitted that he had indeed signed it. “Of course I did put my signature on that letter,” Guo said, claiming it was part of an attempt to rescue his family and employees back in China.<sup>30</sup> However, when asked if he had “promised loyalty” to Xi Jinping, with the letter in front of him in the original Mandarin and an English translation Guo simply said, “I cannot recall.”<sup>31</sup> Asked if he included the Xi Jinping loyalty letter as part of his September, 2017 asylum application, Guo responded, “I cannot recall.”<sup>32</sup>

To summarize: Guo Wengui built his fortune with China’s MSS intelligence service. He served as an MSS asset at home, became collateral damage in a Chinese Communist Party faction fight and moved to the United States without defecting from the MSS. From his American sanctuary, Guo pledged his loyalty to Chinese Communist Party leader Xi Jinping while planning or carrying out punitive operations and propaganda operations either to ingratiate himself with the regime or to act as a controlled agent under Beijing’s explicit instructions. When pinned down under oath, Guo claimed not to remember whether he included his loyalty pledge in his application for American political asylum. Under those considerations, it is fair to say that Guo Wengui is a Communist Chinese spy.

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<sup>28</sup> Guo Wengui, “Deposition of Wengui Guo [sic] In the Matter of *Guo Wengui vs. Yeliang Xia*,” U.S. District Court Eastern Division of Virginia, 1:18-cv-174 (“*Deposition*,” Exhibit A), p. 76:5-6.

<sup>29</sup> Guo Wengui, *Deposition*, 76:20-22.

<sup>30</sup> Guo Wengui, *Deposition.*, 77:1-6.

<sup>31</sup> Guo Wengui, *Deposition.*, 77:20.

<sup>32</sup> Guo Wengui, *Deposition.*, 77:17.

## F. Guo is a serial litigator

The Plaintiff graphically announced his plan to flood American courts with crippling defamation suits against his critics. While returning to New York from Virginia on July 3, 2019, Guo swore to tie up and break his opponents through the American legal system for the rest of their lives. He had just left the federal courthouse in Alexandria, Virginia, where he was a plaintiff in the *Guo Wengui vs. Xia Yeliang* case.

Again speaking in the third person, Guo said: “In the future, 20 lawsuits against Guo Baosheng will be launched. He [Guo Wengui] will let Guo Baosheng struggle in the court for a lifetime. He [Guo Wengui] will always use the court as a battlefield. . . . Xianmin Xiong, you will be beaten by my 50 lawsuits until you are thrown into the U.S. prison. And Zhang Wei, you will be the next.”<sup>33</sup>

## G. Guo’s Allegations Against Me

In his Complaint, Guo makes false allegations about me in reference to the *Eastern* case to which neither he nor I are a party. Relating to the defamation issue in this case, Guo makes conclusions about malice while providing no evidentiary facts. (Compl. ¶¶ 51, 53, 56-57, 58, 59, 60, 62, 63, 64, 65, 66, 67-68, 69, 85, 96, 101-102). Indeed, he accuses me of Communist collusion. Guo alleges that I am “interacting” with “CCP cohorts” (Compl. ¶¶ 53) and alleges that I, with co-defendant French Wallop, are “actively engaged with . . . CCP agents to attack Guo” (Compl. ¶¶ 54). Yet he provides no evidentiary facts to substantiate these new allegations.

As he does with other defendants, Guo attempts to hold me accountable for alleged actions of others. By lumping me with others as the “Strategic Defendants,” Guo tries to hold me

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<sup>33</sup> See Guo Wengui video with English subtitles, July 3, 2019, <http://jmichaelwaller.com/wp-content/uploads/2019/10/Guo-Wengui-vowed-to-use-the-court-as-his-battlefield.mp4>. The full version of the video, without subtitles, is here: <https://youtu.be/soZhdsNb9HU>.

accountable for being at an event where I was not present. (Compl. ¶¶ 80) and hold all “Strategic Defendants” collectively accountable (Compl. ¶¶ 85) for what he alleges, as described in the arguments of other defendants.

### **ARGUMENT**

I am by this motion asking that the case against me be dismissed with prejudice. The other parties as co-defendants in this suit, who have counsel, have filed briefs that make clear that the statements attributed to me are not libelous under the applicable laws. They are statements of opinion and otherwise privileged as detailed in those briefs and as summarized below.

#### **I. PLAINTIFF’S COMPLAINT SHOULD BE DISMISSED BECAUSE IT FAILS TO STATE A DEFAMATION CLAIM AGAINST DEFENDANT**

##### **A. Legal Standard for a Motion to Dismiss Under CPLR §§ 3211(a)(1) and 3211(a)(7)**

New York law recognizes and scrupulously protects the free speech principles implicated in defamation cases like this one involving matters of obvious public concern, such as Guo’s claimed public activism in opposition to the Chinese Communist Party. It thus is critically important for the Court to put an immediate end to Plaintiff’s unmeritorious claims by granting my motion to dismiss.

On a motion to dismiss for failure to state a cause of action under CPLR § 3211(a)(7), “the pleading is to be afforded a liberal construction.” *McRedmond v Sutton Place Rest. and Bar, Inc.*, 48 A.D.3d 258, 259 (1st Dep’t 2008). But, this Court is not required to “bare legal conclusions” masquerading as allegations or purported “factual claims which are either inherently incredible or flatly contradicted by documentary evidence.” *Summit Solomon & Feldesman v. Lacher*, 212 A.D.2d 487, 487 (1st Dep’t 1995). *See also Salvatore v. Kumar*, 45

A.D.3d 560, 562-63 (2d Dep't 2007) ("While the allegations in the complaint are to be accepted as true when considering a motion to dismiss[,] allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration") (dismissing defamation claims).

On a motion to dismiss based upon documentary evidence pursuant to CPLR §3211(a)(1), the First Department looks to "whether the documentary evidence submitted 'conclusively establishes a defense to the asserted claims as a matter of law.'" *Scott*, 282 A.D.2d at 183 (reversing trial court's denial of defendant's motion to dismiss). If so, the complaint is to be dismissed with prejudice and judgment entered for me as a defendant. *See Chambers v Weinstein*, 44 Misc. 3d 1224(A) (N.Y. Sup. 2014) (dismissing claims, where emails demonstrating that defendant was still negotiating a transaction in 2012 sufficiently established that defendant did not know that the transaction had actually terminated in 2011, and therefore could not have aided and abetted fraud), *aff'd*, 135 A.D.3d 450 (1st Dep't 2016).

In addition, a proper defamation claim must set forth the "time, place and manner of the purported defamation." *Offor v Mercy Med. Ctr.*, 171 A.D.3d 502, 503 (1st Dep't 2019) (citations omitted). Thus, New York courts routinely dismiss defamation claims (like this one) where plaintiffs "failed to establish all the elements of defamation", including "the time, the manner and the persons to whom the publication was made." *Murphy v. City of New York*, 59 A.D.3d 301 (1st Dep't 2009) (emphasis added); *Buxbaum v Castro*, 104 A.D.3d 895 (2d Dep't 2013) (dismissing defamation claim for Plaintiff's failure to assert "the time, place and manner of the purported defamation"); *Buffolino v Long Is. Sav. Bank, FSB*, 126 A.D.2d 508, 510 (2d Dep't 1987) ("the complaint fails to state a cause of action for defamation. . . . These allegations . . . do not . . . provide the time, place and manner of the purported defamation.").

**B. Alternatively, this Court Should Dismiss Plaintiff's Complaint for Failure to Plead Actual Malice**

Plaintiff's allegations are inadequate for the additional and alternative reason that the Complaint is devoid of any allegation of "actual malice" as required for a defendant to defame a self-avowed public figure like Guo.

Guo has taken affirmative steps to attract public opinion. He has given interviews to some of the world's most influential news organizations, held news conferences in Washington, D.C., and New York, and operates an online media network called "Guo Media" and "Voice of Guo" with millions of followers, as other defendants may describe in their statements. *See James v. Gannett Co., Inc.*, 40 N.Y.2d 415 (N.Y. 1976) ("The essential element underlying the category of public figures is that the publicized person has taken an affirmative step to attract public attention"). Guo squarely pleads—in this and many other matters he has filed in courts across the United States—that he is a renowned public figure with millions of followers both within China and internationally. Moreover, the controversies in which Guo implicates himself are undoubtedly public controversies. Indeed, the Complaint cites a report from the USSC, which devotes multiple pages to Guo and his alleged persecution by the CCP.

A California court has found that Guo was, at minimum, a limited public figure for the purposes of "tweets about Plaintiff [Guo] linking him to corruption, lying, and spying." The court said that national news organization's coverage about "whether his allegations about China's government are true" indicate that Guo might be a general public figure. (*See Minute Order at 3-4, Guo Wengui vs. Jianbin Yuan*, No. BC720420 (Cal. Super. Ct. L.A. Cty. Dec 6, 2018).

As a public figure, Guo must "allege facts sufficient to show actual malice with **convincing clarity**." *Jimenez v. United Fed'n of Teachers*, 239 A.D.2d 265, 266, 657 N.Y.S.2d

672 (App. Div. 1997) (emphasis added). *See also Sands v News Am. Pub., Inc.*, 237 A.D.2d 177, 177 (1st Dep't 1997) (limited public figure plaintiff failed to "plead and prove constitutional malice," which requires evidence of "convincing clarity" that the defendant was "aware that the [statement] was probably false"). The First Department repeatedly has held that a libel claim alleging only "conclusory allegations" of malice is insufficient to defeat a qualified privilege and should be dismissed. *Green v. Combined Life Ins. Co. of New York*, 69 A.D.3d 531, 892 N.Y.S.2d 760 (1st Dep't App. Div. 2010). *See also, e.g., Matter of Abbitt v. Carube*, 159 A.D.3d 408, 410 (1st Dep't 2018); *O'Neill v. New York University*, 97 A.D.3d 199, 213 (1st Dep't 2012); *Green v. Combined Life Ins. Co. of N.Y.*, 69 A.D.3d 531, 531 (1st Dep't 2010); *Lowinger v. Jacques*, 204 A.D.2d 175, 176 (1st Dep't 1994). Indeed, in one case where the trial court did not dismiss a complaint alleging "actual malice" in a wholly conclusory fashion, the First Department reversed and dismissed the complaint as legally defective. *See Ferguson v. Sherman Sq. Realty Corp.*, 30 A.D.3d 288, 288 (1st Dep't 2006).<sup>34</sup>

Even on a motion to dismiss, Plaintiff's conclusory statements are not entitled to a presumption of truth or any favorable inference. *See Caniglia v. Chicago Tribune-New York News Syndicate Inc.*, 204 A.D.2d 233, 233-34 (1st Dep't 1994); *Summit Solomon & Feldesman v Lacher*, 212 A.D.2d at 487. To plead actual malice, Guo "must provide more than . . . a formulaic recitation of the elements of a cause of action." *HF Lexington KY LLC v Wildcat Synergy Mgr. LLC*, 35 Misc 3d 1210(A) (Sup. Ct. 2012) (citing *O'Donnell, Fox & Gartner, P.C. v R-2000 Corp.*, 198 A.D.2d 154 (1st Dep't 1993)). *See also Pandian v New York Health and*

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<sup>34</sup> This pleading rule is also often invoked by the Second Department. *See, e.g., Serratore v. Amer. Port Servs. Inc.*, 293 A.D.2d 464,465 (2d Dep't 2002) ("mere[ly] conclusory assertions of [ ] malice do not suffice" to defeat privilege) (citing *Hollander v. Cayton*, 145 A.D.2d 605, 606 (2d Dep't 1988)); *Doherty v. New York Tel. Co.*, 202 A.D.2d 627, 627 (2d Dep't 1994) (affirming dismissal because "alleged [ ] statements were clearly entitled to a qualified privilege, which is not overcome by [ ] plaintiff's conclusory allegations").

*Hosps. Corp.*, 54 A.D.3d 590, 591 (1st Dep't 2008) (affirming trial court's grant of defendants' motion to dismiss for failure to state a claim, where the complaint "failed to demonstrate a triable issue of fact as to whether defendants were motivated by actual malice"); *Cohn v Natl.*

*Broadcasting Co., Inc.*, 67 A.D.2d 140, 146 (1st Dep't 1979) ("the general conclusory assertion that [the statement] was maliciously published is insufficient") (emphasis added), *aff'd*, 50 NY2d 885 (1980).

The legal definition of "actual malice" is knowledge that a statement was false or with reckless disregard of whether it was false or not; "reckless disregard" has been defined as a high degree of awareness of probable falsity. *Gertz v Robert Welch, Inc.*, 418 US 323, 332; *Suozzi v Parente*, 202 A.D.2d 94, 101. *Accord Jee v. New York Post Co.*, 176 Misc. 2d 253, 257, 671 N.Y.S.2d 920 (Sup. Ct. 1998), *aff'd*, 260 A.D.2d 215, 688 N.Y.S.2d 49 (App. Div. 1999). The United States Supreme Court has further emphasized that "actual malice" in the defamation context is without regard to "spite, hostility or intention to harm." *Greenbelt Cooperative Publishing Association v. Bresler*, 398 U.S. 6, 10 (1970). "Rather, the actual malice inquiry focuses on the publisher's state of mind regarding the truth of his statements." *Davis v Costa-Gavras*, 654 F Supp 653, 656 (S.D.N.Y. 1987) (emphasis added). Thus, "a public figure defamation plaintiff must show either that the publisher actually entertained serious doubts about the veracity of the publication, or that there are 'obvious reasons to doubt the veracity of the informant or the accuracy of his reports.'" *Id.* (emphasis in original) (citation omitted).

The United States Supreme Court has stated that "actual malice," in general, occurs when a "story is fabricated by the defendant, is the product of his imagination, or is based wholly on an unverified anonymous telephone call." *St. Amant*, 390 U.S. at 732. Actual malice is not "Ill will,

improper motive or personal animosity.” See *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 510-11 (1991).

Under New York law, Guo’s purported allegations of “malice” are textbook examples of inadequate, conclusory pleading. For example, Guo repeats a mantra that the various allegedly defamatory statements were “made with knowledge of ... falsity [and] with the intent to harm Guo’s reputation.” Compl. ¶¶57, 60, 63, 66, 69. Such a “parade of conclusions without a single fact in support” is reason for a swift and decisive dismissal. See *L.Y.E. Diamonds Ltd. v. Gemological Ins. of Am., Inc.*, 2017 WL 6507941 (N.Y.Sup.) (Ostrager, J.) (granting motion to dismiss for failure to plead actual malice).

Furthermore, the allegedly libelous statement quoted in the Complaint **does not** (as alleged in the Complaint) “accuse[] Guo of being engaged in the criminal act of espionage.” *Id.* at ¶75. Compare *id.* ¶ 74 (quoting my website: “Guo Wengui: ‘Dissident-hunter, propagandist, and agent in the service of the ... Chinese Communist Party’”).<sup>35</sup> The headline in sub-quotes is an exact quote from the Strategic Vision counterclaim. Thus, Guo’s allegation of “actual malice” with regard to my website depends on a literal *non sequitur* and does not remotely allege **facts** necessary to plead actual malice under New York law.<sup>36</sup> Furthermore, as I argue, the subquote in the headline, as well as the post on his website, are direct quotes from a counterclaim in a pending legal proceeding and are absolutely privileged, as discussed below.

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<sup>35</sup> As noted previously, in August 2017 (prior to my tweet), Guo had signed a letter declaring his “patriotism and loyalty to” CCP Chairman and Chinese President Xi Jinping. Guo admitted to having signed this letter in his depositions in the *Xia* litigation and the *Eastern* litigation. Guo Wengui, “Deposition of Wengui Guo [sic] In the Matter of *Guo Wengui vs. Yeliang Xia*,” U.S. District Court Eastern Division of Virginia, 1:18-cv-174 (Exhibit A).

<sup>36</sup> As discussed below, statements made in litigation are absolutely privileged and, as such, cannot support a defamation claim. Guo’s allegations regarding me posting the Amended Counterclaim on my personal website fail for this additional reason.

**C. Plaintiff Has Not Pled Any Statements Capable of Defamatory Meaning as a Matter of Law**

The Complaint should be dismissed for the additional reason that my statements cannot be considered defamatory as a matter of law.

Whether a statement is defamatory constitutes “a legal question to be resolved by the court in the first instance.” *Kramer v. Skyhorse Pub., Inc.*, 989 N.Y.S.2d 826, 833 (Sup. Ct. 2014) (citations omitted). *See also Golub v. Enquirer/Star Group, Inc.*, 89 N.Y.2d 1074, 1076, 659 N.Y.S.2d 836, 681 N.E.2d 1282 (1997); *Armstrong v. Simon & Schuster*, 85 N.Y.2d 373, 380, 625 N.Y.S.2d 477, 649 N.E.2d 825 (1995); *Aronson v. Wiersma*, 65 N.Y.2d 592, 593, 493 N.Y.S.2d 1006, 483 N.E.2d 1138 (1985); *James v. Gannett Co.*, 40 N.Y.2d 415, 419, 386 N.Y.S.2d 871, 353 N.E.2d 834 (1976).

Under New York law, to determine whether a statement is defamatory,

[t]he words must be construed in the context of the entire statement or publication as a whole, tested against the understanding of the average reader, and if not reasonably susceptible of a defamatory meaning, they are not actionable and cannot be made so by a strained or artificial construction.

*Aronson*, 65 N.Y.2d at 594, 493 N.Y.S.2d 1006, 483 N.E.2d 1138.

For the reasons explained below, none of the alleged statements can be considered defamatory as a matter of law.

**D. Guo Cannot Assert a Defamation Claim Based on Strategic Vision’s Amended Counterclaim Because of Litigation Privilege and Fair Report Privilege**

I am not a party to the *Eastern* litigation. Nonetheless, Guo appears to accuse me of defamation based on statements made in Strategic Vision’s Amended Counterclaim. *See Compl.*

¶¶70-73. Even if I plausibly could be held liable for statements made by another party such as Strategic (and I cannot), statements made in the course of litigation are absolutely privileged.

In New York, “it is well-settled that statements made in the course of litigation are entitled to absolute privilege.” *Front, Inc. v. Khalil*, 24 N.Y.3d 713, 718, 28 N.E.3d 15, 4 N.Y.S.3d 581 (2015). *See also Conte v. Newsday, Inc.*, 703 F.Supp.2d 126, 146 (E.D.N.Y.2010) (“New York has traditionally accorded an absolute privilege to oral or written communications made in the course of judicial proceedings and which relate to the litigation). “Consequently, a statement made in the course of a judicial proceeding is absolutely privileged under New York common law so long as it is considered material and pertinent to the litigation.” *Conte*, 703 F. Supp. at 146. *See also Martirano v. Frost*, 25 N.Y.2d 505, 507, 307 N.Y.S.2d 425, 255 N.E.2d 693 (1969) (“a statement, made in open court in the course of a judicial proceeding, is absolutely privileged if, by any view or under any circumstances, it may be considered pertinent to the litigation”). The absolute privilege attaches to each stage in a judicial proceeding, and attaches to witnesses, judges, counsel and the parties themselves. *Weitz v. Wagner*, No. 07–CV–1106, 2008 WL 5605669, at \*7 (E.D.N.Y. July 24, 2008). This absolute immunity serves the public’s interest in the “freedom of participants in litigation to ‘speak with that free and open mind which the administration of justice demands.’” *D’Annunzio v. Ayken, Inc.*, 876 F. Supp. 2d 211, 216–17, 2012 WL 2906248 (E.D.N.Y. 2012) (quoting *Youmans v. Smith*, 153 N.Y. 214, 47 N.E. 265 (1897)).

Where, as here, statements alleged to be defamatory are made in circumstances that give rise to an absolute privilege, a court should grant a motion to dismiss the defamation claim. *See, e.g., Fishof v. Abady*, 280 A.D.2d 417, 418 (1st Dep’t 2001) (reversing and granting cross-motion to dismiss); *Goldfeder v. Weiss*, 250 A.D.2d 731, 731 (2d Dep’t 1998) (reversing and granting motion to dismiss for absolutely privileged statements made in judicial proceeding);

*L.Y.E. Diamonds LTD., v. Gemological Ins. of Am., Inc.*, 2017 WL 6507941 (N.Y.Sup.) (Ostrager, J.) (granting motion to dismiss, among other reasons, because of litigation privilege).

Furthermore, public statements **about** pending litigation are protected under New York's Civil Rights Law and "fair report privilege." So long as a party's public statements are substantially accurate accounts of a lawsuit, they will be covered by New York's statutory fair report privilege, codified in Section 74 of the Civil Rights Law. Section 74 provides that a civil action "cannot be maintained against any person, firm or corporation, for the publication of a fair and true report of any judicial proceeding, legislative proceeding or other official proceeding" (emphasis added). The privilege is not limited to the media; it also covers public outreach by parties and their counsel. *See D'Annunzio*, 876 F. Supp. 2d at 221 ("[i]t is irrelevant that Plaintiffs, as parties to the action, issued the statements. Section 74 applies to 'any person,' not just to journalists or attorneys")

A substantial portion of Plaintiff's Complaint is devoted to Strategic Vision's Amended Counterclaim. *See* Compl. ¶¶70-73. By grouping me in with the "Strategic Defendants," Guo seems to be attempting to assert a libel claim against me for reprinting Strategic Vision's absolutely privileged statements in the Amended Counterclaim, as well as my related "fair reports" regarding those allegations. *See* Compl. ¶67 (referencing one of my tweets "***in response to a tweet about the Eastern Profit Litigation***") (emphasis added); *id.* ¶74 (referencing a posting on my website about Strategic's Amended Counterclaim). Those statements are not defamatory under New York Law, and are not actionable as a matter of law because of the fair report privilege.

Furthermore, my statements about the litigation are protected under the state's Civil Rights Law and fair report privilege. By reference, I incorporate the arguments that follow

defendant Attorney Eddie Greim makes in his brief. Therefore, Guo's defamation claim about my blog posting should be dismissed.

**E. Certain Allegedly Defamatory Statements Are Not "Of and Concerning" Guo**

One of the statements alleged in Guo's Complaint is not about Guo at all. I allegedly tweeted: **"One of #GuoWengui's bodyguards chased a 70 year-old woman into the street outside the federal courthouse because she was taking pictures of Guo's car."** See Compl. ¶61 (emphasis added). This statement cannot support a defamation claim, even arguably.

A libel plaintiff must allege and prove that a challenged statement was "of and concerning" him. *Julian v. Am. Bus. Consultants, Inc.*, 2 N.Y.2d 1, 16 (1956). The "of and concerning" requirement is a "significant limitation on the universe" of those who may sue for a particular claimed libel. *Kirch v. Liberty Media Corp.*, 449 F.3d 388, 399-400 (2d Cir. 2006). Whether a complaint sufficiently alleges that the alleged libel is "of and concerning" the plaintiff is a question of law for the Court. *Springer v. Viking Press*, 60 N.Y.2d 916, 918 (1983).

While the statement need not specifically identify the plaintiff to be actionable, the plaintiff has a heavy burden, even at the pleading stage, of establishing that the statement was actually about him. See *Lihong Dong v. Ming Hai*, 108 A.D.3d 599, 969 N.Y.S.2d 144 (2d Dep't 2013). The plaintiff must show that "the reading public acquainted with the parties and the subject" would have understood the statement to be "of and concerning" him. *Carlucci v. Poughkeepsie Newspapers, Inc.*, 57 N.Y.2d 883, 885, 456 N.Y.S.2d 44, 442 N.E.2d 442 (1982).

Because the statement alleged in Guo's Complaint (¶61) is about Guo's unnamed bodyguard, not Guo, it is not actionable as a matter of law. Although the Complaint suggests that the tweet "accused Guo of harassment" (*id.*), because he "instructed his bodyguards" to chase the 70 year-old woman (¶62), that is not at all true. Guo offers no evidence to prove his assertion.

The statement only mentioned the bodyguard, not Guo, and thus does not come close to defamation of Guo.

**F. The Remaining Statements Are Pure Opinion Or Otherwise Not Actionable**

The remaining statements alleged in Guo's Complaint are my "tweets" on my Twitter account @JMichaelWaller. See Compl. ¶¶55, 58, 64, 67. Those tweets are not actionable as a matter of law.

Because only assertions of fact are capable of being proven false, New York courts consistently have held that a plaintiff cannot maintain a libel action unless it is based on published assertions of fact, not opinion. See *Brian v. Richardson*, 87 N.Y.2d 46, 50-51 (1995). See also *Shawe v. Kramer Levin Naftalis & Frankel LLP*, 2018 N.Y. Slip Op. 30277(U), 11-12, 2018 WL 984833, at \*6 (N.Y.Sup.) ("An expression of pure opinion is not actionable defamation, no matter how vituperative or unreasonable").

To determine whether a statement is one of fact, or a constitutionally protected opinion, the Court of Appeals has set forth the following test:

(1) whether the specific language in issue has a precise meaning which is readily understood; (2) whether the statements are capable of being proven true or false; and (3) whether either the full context of the communication in which the statement appears or the broader social context and surrounding circumstances are such as to signal... readers and listeners that what is being read or heard is likely to be opinion, not fact.

*Gross v. New York Times Co.*, 82 N.Y.2d 146, 153 (1993) (quotation marks omitted).

In distinguishing between actionable factual assertions and non-actionable opinions, context is key: "the courts must consider the content of the communications as a whole, as well as its tone and apparent purpose. Rather than sifting through a communication for the purpose of isolating and identifying assertions of fact, the court should look to the over-all context in which the assertions were made and determine on that bases 'whether the reasonable reader would have

believed that the challenged statements were conveying facts about the libel plaintiff.” *Brian*, 87 N.Y.2d at 51 (internal citation omitted).

Under the United States and New York State Constitutions, a statement of opinion that is accompanied by a recitation of the facts upon which it is based is a “pure opinion,” is absolutely privileged and is not actionable. *Gross*, 82 N.Y.2d at 153-54 (1993); *Steinhilber v. Alphonse*, 68 N.Y.2d 283, 289 (1986); *see also* U.S. CONST. amend. I; N.Y. CONST. art. I, § 8. Furthermore, “[e]ven apparent statements of fact may assume the character of statements of opinion, and thus be privileged, when made in public debate, heated labor dispute, or other circumstances in which an audience may anticipate ... epithets, fiery rhetoric or hyperbole.” *Sandals Resorts Int’l Ltd. v. Google, Inc.*, 2011 WL 1885939, at \*6 (1st Dep’t May 19, 2011) (brackets original) (quoting *Steinhilber*, 68 N.Y.2d at 294).

Here, the alleged statements are pure opinion or otherwise not defamatory under New York law.

**“More recently, I was hopeful that Guo could help finish the job, which is why I did some work for him. Guo is a fraud.”** Compl. ¶55 (emphasis added). The statement that Guo is a “fraud” is a nonactionable statement of opinion because it is hyperbole and not capable of being proved true or false. *See Ram v. Moritt*, 205 A.D.2d 516, 517 (2d Dep’t 1994) (statement that doctor was “liar” and “cheat” was nonactionable opinion).

**“Today, #GuoWengui is trying to stop @XiaYeliang from calling witnesses. With all the money he says he has, Guo could not find a single person to serve as a witness on this behalf at trial.”** Compl. ¶58 (emphasis added).<sup>37</sup> To begin with, the statement does not accuse

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<sup>37</sup> In the *Xia Yeliang* litigation referenced repeatedly in Guo’s Complaint (e.g., footnote 2), Guo in fact objected to witnesses Professor Xia attempted to call as part of the defense. I was one of those proposed witnesses. *See* Guo’s Objections to Xia’s Amended Witnesses List, ECF No. 113, Civil Action No. 18-cv-174.

Guo of “witness intimidation” as Guo alleges. *Id.* The statement is not defamatory and, if anything, is pure opinion.

**“Guo is untruthful. #CPDC has the most capable & distinguished #China strategists on the @realDonaldTrump team. In April, Guo falsely implied that he was behind #CPDC until this claim was exposed as false.”** Compl. ¶64 (emphasis added). Guo apparently takes issue with the statement that Guo “falsely implied that he was behind” the Committee on Present Danger-China (“CPDC”). What Guo “implied” is a statement of pure opinion and not capable of being proven false.

**G. This Court Should Dismiss Plaintiff’s Complaint for Failure to Plead Actual Malice**

Guo, as noted above, admits he is a public figure because he—in his own words—“has proudly engaged in purposeful activities with the intent of drawing attention to outrageous and system corruption in China,” and he has “‘thrust’” his voice and opinions into a ‘vortex’ of an important public controversy in China.” Pl.’s Opp. To Def.’s Special Motion to Strike at 6-7, *Guo v. Jianbin Yuan*, No. BC720420 (Cal. Super. Ct. L.A. Cty. Nov. 19, 2018). Guo’s admission comports with governing law. *See James v. Gannett Co., Inc.*, 40 N.Y.2d 415, 422 (1976) (“[t]he essential element underlying the category of public figures is that the publicized person has taken an affirmative step to attract public attention”); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 352 (1974) (limited-purpose public figure has “thrust himself into the vortex of [the] public issue [and] engage[d] the public’s attention in an attempt to influence its outcome”).<sup>38</sup>

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<sup>38</sup> The California court agreed with Guo and found that Guo was a limited purpose public figure for “tweets about Plaintiff (Guo) linking him to corruption, lying, and spying.” *See* Minute Order at 3-4, *Guo v. Jianbin Yuan*, No. BC720420 (Cal. Super. Ct. L.A. Cty. Dec. 6, 2018).

In this case, of course, he also boasts of his purported status as the “most” outspoken and vitriolic critic of the CCP and “most wanted Chinese political dissident throughout the world” who is battling persecution for his “whistleblowing” activities. *See e.g.*, Compl. ¶¶2, 28-29. In other cases, he has cast himself as a celebrated activist both on social media and in traditional print media, such as the New York Times.

A public figure such as Guo must “plead and prove constitutional malice,” which requires evidence of “*convincing clarity*” that I was “aware that the [statement] was probably false.” *Sands v. News Am. Publ., Inc.*, 237 A.D.2d 177, 177 (1st Dep’t 1997) (emphasis added). The First Department repeatedly has held that a libel claim (like Guo’s) alleging only “conclusory allegations” of malice should be dismissed as a matter of law. *See, e.g., Abbitt v. Carrube*, 159 A.D.3d 408, 410 (1st Dep’t 2018); *O’Neill v. New York Univ.*, 97 A.D.3d 199, 213 (1st Dep’t 2012); *Green v. Combined Life Ins. Co. of New York*, 69 A.D.3d 531, 531 (1st Dep’t 2010); *Ferguson v. Sherman Sq. Realty Corp.*, 30 A.D.3d 288, 288 (1st Dep’t 2006); *Lowinger v. Jacques*, 204 A.D.2d 175, 176 (1st Dep’t 1994).

Even on a motion to dismiss, to plead actual malice, Guo ““must provide more than . . . a formulaic recitation of the elements of a cause of action.” *HF Lexington KY LLC v. Wildcat Synergy Mgr. LLC*, 35 Misc. 3d 1210(A), 2012 N.Y. Slip Op. 50648(U), at \*4 (Sup. Ct., N.Y. County 2012) (citing *O’Donnell, Fox & Gartner, P.C. v. R-2000 Corp.*, 198 A.D.2d 154 (1st Dep’t 1993)). *See also Pandian v. New York Health and Hosps. Corp.*, 54 A.D.3d 590, 591 (1st Dep’t 2008) (affirming trial court’s grant of defendants’ motion to dismiss for failure to state a claim, where the complaint “failed to demonstrate a triable issue of fact as to whether defendants were motivated by actual malice”); *Caniglia v. Chicago Tribune-New York News Syndicate Inc.*, 204 A.D.2d 233, 233-34 (1st Dep’t 1994); *Cohn v. Natl. Broadcasting Co., Inc.*, 67 A.D.2d 140,

146 (1st Dep't 1979) ("the general conclusory assertion that [the statement] was maliciously published is insufficient"), *aff'd*, 50 N.Y.2d 885 (1980).

The legal definition of "actual malice" is knowledge that a statement was false or made with high degree of awareness of probable falsity. *Gertz v. Robert Welch, Inc.*, 418 U.S. at 332; *Suozzi v. Parente*, 202 A.D.2d 94, 101 (1st Dep't 1994). *Accord Jee v. New York Post Co.*, 176 Misc. 2d 253, 257 (Sup. Ct., N.Y. County 1998), *aff'd*, 260 A.D.2d 215 (1st Dep't 1999). Actual malice "focuses on the publisher's state of mind regarding the truth of his statements" rather than any subjective intent to harm. *Davis v. Costa-Gavras*, 654 F. Supp. 653, 656 (S.D.N.Y. 1987) (emphasis added). Thus, "a public figure defamation plaintiff must show either that the publisher actually entertained serious doubts about the veracity of the publication, or that there are 'obvious reasons to doubt the veracity of the informant or the accuracy of his reports.'" *Id.* (emphasis in original) (citation omitted).

Guo's Complaint is replete with the same type of conclusory, boilerplate pleading that New York courts routinely throw out as insufficient. *See, e.g.*, Compl. ¶¶57, 60, 63, 66, 69 (allegedly that the various allegedly defamatory statements were "made with knowledge of ... falsity [and] with the intent to harm Guo's reputation"). *See also L.Y.E. Diamonds*, 2017 WL 6507941 (granting motion to dismiss for failure to plead actual malice), *aff'd*, 169 A.D.3d 589 (1st Dep't 2019).

#### **H. Lack of Jurisdiction**

Personal jurisdiction is lacking in this case. Guo acknowledges in his Complaint that I am a resident of the District of Columbia. I do not reside, own property, or do business in the State of New York. My online commentaries on Twitter and my personal website cited in Guo's complaint were written in the District of Columbia. They are equally accessible throughout the

United States and worldwide, and not specifically not directed at audiences or subject matter in New York. The server on which my website resides is located in Arizona. Therefore, I am not subject to personal jurisdiction of this Court for the same reasons as co-defendant French Wallop explains through her counsel. The points explained in the arguments of defendants Strategic Vision and Ms. Wallop apply to me as well.

### **CONCLUSION**

For all of the foregoing reasons, and as better explained in the briefs of my fellow defendants with counsel, I ask that the Court please dismiss the Plaintiff's suit against me with prejudice, and award me costs, fees, and disbursements together with such other and further relief as is just and proper.

Respectfully submitted,

Dated: October 25, 2019



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