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May 5, 2023

Via Email Only

Mr. Richard K. Delmar
Deputy Inspector General
Office of Inspector General, Department of Treasury
1500 Pennsylvania Avenue, N.W., Room 4436
Washington, D.C. 20220

Re: Response to Hunter Biden's Request for Review of a Media Figure's Publication of Matters of Public Importance

Dear Mr. Delmar:

This Firm is counsel to Mr. Garrett Ziegler and ICU, LLC dba *Marco Polo*. I write to respond to the letter that attorney Abbe Lowell sent to you on behalf of R. Hunter Biden on April 24, 2023 (the "Letter"). Mr. Lowell's Letter makes a knowingly or recklessly false accusation that Mr. Ziegler committed a federal crime. It then uses that accusation to demand that your office open an investigation (which would be both unlawful and unconstitutional, as set forth below) into the newsgathering and reporting of *Marco Polo*, a nonprofit investigative reporting entity.

Specifically, the Letter accuses Mr. Ziegler of conspiring to wrongfully obtain Suspicious Activity Reports (SARs) concerning Hunter Biden's financial transactions. Letter at 3 (citing 31 C.F.R §1020.320(e) and 31 U.S.C. § 5322(a)).¹ The Letter tries to couch its accusation as a mere "conclusion" that is faithfully drawn from "Mr. Ziegler's public statements." Letter at 2. However, upon closer examination, the Letter cites exactly one statement. It is a single interview clip in which, in about five seconds, Mr. Ziegler's entire statement regarding *Marco Polo's* possession of the SARS was as follows: "We have an insider at JP Morgan that gave us suspicious activity reports. These are bank documents submitted to the U.S. Treasury Department. We redacted nothing." Letter at page 2 (citing an interview posted at

¹ Provisions which, respectively, regulate bank and governmental disclosure of SARs and create potential criminal penalties for Bank Secrecy Act violations.

<https://rumble.com/v1whty2-600-page-dossier-on-the-hunter-biden-laptop-walksthrough-thelies-to-guaran.html>).

After this falsehood, the Letter goes further, asserting that Mr. Ziegler has somehow admitted that he “worked with” the insider “to obtain” the SAR. Letter at 3. The Letter cites no source for this claim, and it is knowingly or recklessly false. To the extent Mr. Lowell would retreat back to the single, earlier-cited statement that *Marco Polo* “has” a confidential source, it is not even remotely criminal for journalists and publishers like those at *Marco Polo* to “have an insider” as a confidential source. *See generally New York Times Company v. United States*, 403 U.S. 713 (1971). In short, there is no legal or factual basis whatsoever to claim that *Marco Polo* played any role at all—not even suggestion or mere foreknowledge, which still fall far short of what can be constitutionally covered as criminal conduct²—in the JP Morgan employee’s decision to send the SARs.

The Letter next cites various political grievances presumably harbored by Mr. Lowell’s client and perhaps, to some extent, by the client’s other family members. Those can clearly play no role in any decision by the Department of the Treasury, and their very inclusion suggests that this is not a serious complaint.

Nonetheless, in the exercise of caution, *Marco Polo* would simply point out that any such investigation would be improper without probable cause to believe Mr. Ziegler had committed a crime *independent of* his receipt and possession of the materials. The Privacy Protection Act of 1980 protects Mr. Ziegler from governmental searches premised on his possession of materials he has for “a purpose to disseminate to the public[.]” *See* 42 U.S.C. § 2000aa. The Act has limited carveouts for, for example, preventing death or serious bodily injury and materials related to a crime—but, in the latter instance, *not* if the alleged “crime” is receipt, possession, communication, or withholding of such materials. Absent probable cause to believe *Marco Polo* has committed a crime itself—which, statutorily, cannot include Mr. Ziegler’s receipt and possession of the broadcasted materials—an investigation involving compulsory process or search warrants is prohibited by this Act.

Finally, as the Letter all but admits, *Marco Polo*’s publication of the SARs is protected by the First Amendment. The letter strains to argue *Marco Polo* should not be afforded protections the Constitution affords media figures (describing Mr. Ziegler,

² *Jean v. Mass. State Police*, 492 F.3d 24, 31 (1st Cir. 2007) (holding that the First Amendment protected publication in an individual internet post in a case where the publisher “had reason to know that [the recording] had been illegally recorded”); *Democratic Nat’l Cmte. v. Russian Federation*, 392 F.3d 410, 435 (S.D.N.Y. 2019) (“And, contrary to the DNC’s argument, it is also irrelevant that WikiLeaks solicited the stolen documents from Russian agents. A person is entitled publish stolen documents that the publisher requested from a source so long as the publisher did not participate in the theft”).

Marco Polo's founder, instead as a “possessed . . . political warrior”), but *Marco Polo's* work in compiling and presenting information of undeniable public concern for publication and dissemination is a core activity protected by the First Amendment. See generally *Bartnicki v. Vopper*, 532 U.S. 514 (2001).

In *Bartnicki*, the Supreme Court held that the First Amendment protects newsgathering and publication in which the publisher is not itself involved in the initial unlawful procurement of information. That is precisely why the Letter falsely claims that *Marco Polo* was involved in a bank employee's allegedly wrongful activity, but, as noted above, this is sheer invention. Mere allegation and innuendo is insufficient to circumvent the First Amendment and Privacy Protection Act. See *Allen v. Beirich*, 2021 WL 2911736 at *5 (4th Cir. July 12, 2021) (mere allegation, so as to avoid *Bartnicki*, that Southern Poverty Law Center “participated in” theft of documents by former insider of another organization by paying him \$5,000, was insufficient without actual facts showing participation in the theft itself).

In its concluding paragraphs, the Letter also invites the presumption that there is something inherently illegal about *publishing* SARs under the Bank Secrecy Act regulations. It is true that the regulations require that bank and government employees keep SARs confidential; the regulations go so far, in fact, as to require that the mere existence of the SARs be kept confidential. See 31 C.F.R. §1020.320(e) (“A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed[.]”). But these prohibitions apply to banks and governments, not to outsiders and journalists. *Marco Polo's* publication of the SARs does not differ from standard journalistic practice. See, for instance, the so-called “FinCEN Files”³ published by BuzzFeed News and which earned BuzzFeed News a Pulitzer Prize nomination.

While a Treasury employee was prosecuted for that disclosure, we are unaware of any investigation into or prosecution of BuzzFeed News for publishing information that revealed the existence of countless SARs against specifically identified persons. Mr. Lowell's request for an investigation against Mr. Ziegler and *Marco Polo* for substantially the same journalistic conduct on a much smaller scale is nothing more than an effort to chill speech that disapproved by the son of the Chief Executive of the federal government. It is, in short, a grossly improper request to make of an executive agency. We respectfully ask you to decline it.

³ Published, for all the world to see, at: <https://www.buzzfeednews.com/fincen-files>. Numerous articles disclose the existence of SARs against specific persons. See, for instance, <https://www.buzzfeednews.com/article/anthonymormier/fincen-files-what-banks-said-about-felix-sater-and-100>.



Mr. R. Delmar
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Please contact me if you wish to discuss these matters further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edward D. Greim', written in a cursive style.

Edward D. Greim

cc: Abbe David Lowell, Esq.
Chairman James Comer, House Committee on Oversight and Accountability
Chairman Patrick McHenry, House Financial Services Committee