

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98199 / August 22, 2023

WHISTLEBLOWER AWARD PROCEEDING
File No. 2023-78

In the Matter of the Claim for Award

in connection with

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending the denial of the joint whistleblower award claim submitted by Redacted (“Claimant 1”) and Redacted (“Claimant 2”) (collectively, “Claimants”) in connection with the above-referenced covered action (“Covered Action”). Claimants filed a timely response contesting the preliminary denial.¹ For the reasons discussed below, Claimants’ joint award claim is denied.

I. Background

A. The Covered Action

On Redacted the Commission instituted public administrative and cease-and-desist proceedings against Redacted (“Respondent 1”) and Redacted (“Respondent 2”) (collectively, “Respondents”), finding that Respondents engaged in Redacted and caused violations of Redacted Redacted (“Company”). Respondent 1 agreed to pay Redacted among other relief, to settle the charges. Respondent

¹ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

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settled the charges and pay Redacted in civil money penalties, among other relief. Respondent 1

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On Redacted the Office of the Whistleblower (“OWB”) posted the Notice of Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days.² Claimants filed a timely joint whistleblower award claim.³

B. The Preliminary Determination

On Redacted the CRS issued a Preliminary Determination⁴ recommending that Claimants’ joint claim be denied. The Preliminary Determination recommended a denial because Claimants did not provide information that led to the successful enforcement of the Covered Action within the meaning of Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(3) and 21F-4(c) thereunder. In particular, based on a record that included the declaration (“Declaration”) of one of the Division of Enforcement (“Enforcement”) attorneys assigned to the investigation that led to the Covered Action (“Investigation”),⁵ the CRS preliminarily determined that prior to Claimants’ submission of information, the Commission’s staff (“Staff”) had already opened the Investigation. The CRS also preliminarily concluded that Claimants’ information did not significantly contribute to the Investigation because substantially all of Claimants’ information was already known to Staff. According to the Declaration, the information from Claimants that was previously unknown to Staff was not used in, and did not contribute to, the Investigation or the charges brought in the Covered Action.

² See Exchange Act Rule 21F-10(a), 17 C.F.R. § 240.21F-10(a).
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⁴ See Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d).

⁵ See Exchange Act Rule 21F-12(a), 17 C.F.R. § 240.21F-12(a).

C. Claimants' Response to the Preliminary Determination

In response to the Preliminary Determination, Claimants assert that when they submitted information to the Commission, Redacted

Redacted Claimants state that in

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Claimants state that

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thereby providing a "road map" to the Commission to

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Claimants allege that

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precipitated a number of important events and developments that ultimately prompted the Commission to bring the Covered Action

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For instance,

Claimants assert that

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Commission to issue the Company a subpoena in Company's

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Claimants also state that

prompted the Commission's Division of Corporation Finance to issue letters to the Company.

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Redacted prompted witnesses and sources to cooperate with the Investigation and also increased the pressure on Redacted to resolve the Covered Action Redacted without greater public exposure.

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prompted witnesses and

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Claimants also argue that the Declaration is deficient in a number of ways and omits key details. Claimants allege that the Investigation—which was opened in Redacted—was merely informal, had a lower profile, and did not truly turn into a formal investigation until after Redacted

Claimants argue that they should not be precluded from an award just because the opening of the Investigation transpired before Claimants submitted their information to the Commission. Claimants also allege that the Declaration improperly dismissed and diminished the value of their information. Claimants assert that a number of sources—including the Covered Action, in paragraphs Redacted—have recognized the materiality of Redacted articles to the Company, Respondent 1, and those entities' conduct.⁷

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⁷ See Covered Action, at

Redacted

Additionally, Claimants allege that the Declaration inappropriately dismissed information from ^{Redacted} an individual who ^{Redacted} ^{Redacted} later testified in connection with the Commission’s Investigation in ^{Redacted} Claimants cast doubt on the Declaration’s assertions that ^{Redacted} information was not useful in the Investigation and that the Commission did not rely on ^{Redacted} information in its charging decisions; specifically, Claimants contend that Staff would not have gone through the “superfluous” step of interviewing ^{Redacted} if ^{Redacted} information was not significant. Claimants also argue that the Declaration erroneously downplays Staff’s direct contact with Claimants. In particular, Claimants allege that while the Declaration refers to meetings that transpired between Staff and Claimants’ counsel, the Declaration ignores Claimant 1’s role in being an active and contributing participant in those meetings. Claimants complain that the Declaration fails to explain the import of the information Claimant 1 provided to Staff during those meetings, as Claimant 1 provided Staff with names of sources as well as a “road map” of securities violations that transpired.

Overall, Claimants argue that through ^{Redacted} ^{Redacted} Claimants allege that their information qualifies as “independent analysis” because the information provided the Commission with a “road map” to bring the Covered Action ^{Redacted} Claimants believe that they should receive a joint award for the Covered Action because their information significantly contributed to the Investigation and the Covered Action. Claimants also argue that ^{Redacted}

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II. Analysis

We deny an award to Claimants in connection with the Covered Action. To qualify for an award under Section 21F of the Exchange Act, a whistleblower must voluntarily provide the Commission with original information that leads to the successful enforcement of a covered action.⁸ As relevant here, under Rules 21F-4(c)(1) and (2), respectively, the Commission will consider a claimant to have provided original information that led to the successful enforcement of a covered action if either: (i) the original information caused the staff to open an investigation “or to inquire concerning different conduct as part of a current . . . investigation” and the Commission brought a successful action based in whole or in part on conduct that was the subject of the original information;⁹ or (ii) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”¹⁰

In determining whether a claimant’s information “significantly contributed” to the success of a covered action, the Commission considers whether the information was “meaningful” in that it “made a substantial and important contribution” to the success of the covered action.¹¹ For example, the Commission will consider a claimant’s information to have significantly contributed to the success of an enforcement action if it allowed the Commission to bring the action in significantly less time or with significantly fewer resources, or to bring additional successful claims or successful claims against additional individuals or entities.

Claimants do not qualify for an award in the Covered Action under either Rule 21F-4(c)(1) or (2). We credit the Declaration and a supplemental declaration of the same Enforcement attorney who provided the Declaration (“Supplemental Declaration”), both provided under penalty of perjury, which confirm that Staff opened the Investigation in ^{Redacted} _{Redacted} based on Staff’s review of Company financial statements and other publicly available information concerning the Company. From its inception, the Investigation primarily involved the potential ^{Redacted} _{Redacted}.

According to the Declaration, the tip that Claimants submitted to the Commission was dated ^{Redacted} (“Tip”) and was referred to Staff on ^{Redacted} approximately eight and a half months after the Investigation was opened. The information included in the Tip related to ^{Redacted} The

⁸ Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

⁹ See Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

¹⁰ See Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

¹¹ Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 90922 (Jan. 14, 2021) at 4; *see also* Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 85412 (Mar. 26, 2019) at 9.

Declaration and Supplemental Declaration note that—as reflected in Claimants’ joint whistleblower award application—virtually all of the information in [Redacted] the Tip consisted of publicly available information that Staff had already reviewed by the time of [Redacted]

The one exception to this concerned [Redacted]

[Redacted] While Staff reached out to [Redacted] in [Redacted] and took [Redacted] testimony in [Redacted] Staff did not learn any information from [Redacted] that was useful in the Investigation, and the Commission did not rely on information from [Redacted] in its charging decisions. [Redacted] information was duplicative of information Staff already knew and had developed during the Investigation. And, contrary to Claimants’ assertion that because the Staff decided to interview [Redacted] information must have been significant, Commission staff conduct interviews and take testimony to learn what, *if any*, useful information a witness can provide. In this case, the Declaration and the Supplemental Declaration confirm that [Redacted] did not provide any significant or useful information when [Redacted] testified in connection with the Investigation.

Overall, none of [Redacted] information—including [Redacted]—was used in, nor contributed to, the Investigation or the charges brought in the Covered Action [Redacted]

Claimants’ specific arguments about why they significantly contributed to the Investigation and the Covered Action—that [Redacted]

[Redacted] that ultimately prompted the Commission to issue the Company a subpoena and then bring the Covered Action [Redacted] that Claimants’ [Redacted] allegedly caused the Commission’s Division of Corporation Finance to issue letters to the Company; and that certain sources, including the Covered Action, have recognized the materiality of Claimants’ [Redacted] to the Company, Respondent 1, and those entities’ conduct—are misplaced. Such arguments are inapposite to the determination of whether *the information that Claimants directly submitted to the Commission* either: (1) caused Staff to open the Investigation or inquire concerning different conduct; or (2) significantly contributed to the success of the Covered Action, as required in relevant part by Rules 21F-4(c)(1) and (2). The Declaration and Supplemental Declaration both confirm that Claimants did not provide the Commission with any such information.

Claimants argue that the information they provided to the Commission significantly contributed to the Covered Action because such information purportedly appears in paragraphs [Redacted] of the Covered Action. However, those paragraphs do not support Claimants’ contention that they significantly contributed to the Covered Action. Paragraphs [Redacted] of the Covered Action do not describe how Staff became aware of certain facts or potential

securities violations. According to the Supplemental Declaration, the purpose of those paragraphs was to show that even though *Respondent 1* [Redacted]

[Redacted] [Redacted]
[Redacted] [Redacted]
[Redacted] Staff obtained facts relating to those failures [Redacted] by Respondent 1—after reviewing voluminous records, taking the testimony of dozens of witnesses, and [Redacted] Claimants did not provide any such information to Staff; rather, Staff developed this information during the course of its Investigation.

Claimants also allege that [Redacted] resulting from Claimants’ [Redacted] put pressure [Redacted] to resolve the enforcement actions [Redacted] Claimants also allege that [Redacted] prompted witnesses and sources to cooperate with the Investigation. However, according to the Supplemental Declaration, Staff did not use Claimants’ information during the course of settlement negotiations with Respondent 1 or the Company in connection with the Covered Action [Redacted] There is no evidence that [Redacted] caused [Redacted] settle or prompted witnesses and sources to cooperate with the Investigation.

Claimants further allege that the Commission sent a subpoena to the Company for the first time in [Redacted] which was only after the [Redacted] However, according to the Supplemental Declaration, the [Redacted] subpoena that the Commission sent to the Company was not precipitated by the [Redacted] The subpoena that the Commission sent to the Company, dated [Redacted] was precipitated by a Form 8-K filed by the Company on [Redacted] in the Form 8-K, the Company [Redacted]

Claimants also allege that in [Redacted] only four days after Claimants [Redacted] the Commission’s Division of Corporation Finance sent a letter related to the Company [Redacted] [Redacted] However, according to the Supplemental Declaration, the Division of Corporation Finance letter had nothing to do with, and did not have any impact on, the Investigation, which was conducted by Staff from Enforcement.

Claimants’ other arguments are of no import. Claimants’ speculation that the Investigation—which was opened in [Redacted] well before Claimants [Redacted] submitted their Tip in [Redacted]—was merely informal until after the [Redacted] has no basis in the factual record. Claimants argue that they should [Redacted]

not be precluded from an award just because the opening of the Investigation transpired before Claimants submitted their information to the Commission. However, nowhere in the Preliminary Determination did the CRS suggest this reasoning as the sole ground for denial. In fact, the Preliminary Determination described Claimants' failure to satisfy both Rule 21F-4(c)(1) and Rule 21F-4(c)(2).

Claimants' contentions that the information they provided to Staff in [Redacted] and [Redacted] —after the Tip was submitted to the Commission in [Redacted] — substantially contributed to the Investigation are without merit. According to the Declaration and the Supplemental Declaration, although Staff had conversations with Claimants' counsel and Claimant 1 following Claimants' submission of their Tip—including on [Redacted] and on [Redacted] —none of the information resulting from those communications was probative of the eventual claims that the Commission brought against Respondents [Redacted]. Further, even if, as Claimants allege, [Redacted] claimants [Redacted] must still satisfy the eligibility criteria for receiving awards under the Rules; here, Claimants have not satisfied such criteria.

Moreover, according to the Supplemental Declaration, Claimant 1 provided the names of purported sources and witnesses Claimant 1 believed would be able to assist Staff in its investigative work during Staff's communications with Claimants' counsel and Claimant 1. While Staff interviewed one of the individuals identified by Claimant 1— [Redacted] —and also took [Redacted] sworn testimony during the course of the Investigation, Staff was already aware of [Redacted] from other sources. Staff did not choose to interview [Redacted] and take [Redacted] testimony as a result of any information provided by Claimants or their counsel.¹²

In sum, both the Declaration and the Supplemental Declaration confirm that none of Claimants' information caused the Staff to open the Investigation or inquire into different conduct, nor helped advance the Investigation. Further, none of Claimants' information was used in, nor had any impact on, the charges brought by the Commission in the Covered Action [Redacted]. Thus, Claimants fail to satisfy either Rule 21F-4(c)(1) or (2). Accordingly, their joint award claim must be denied.

¹² Finally, the Commission need not reach the issue of whether Claimants satisfy the criteria for "independent analysis" under Rule 21F-4(b) because failing to satisfy Rule 21F-4(b) was not a ground for the denial of Claimants' joint claim in the Preliminary Determination.

III. Conclusion

Accordingly, it is hereby ORDERED that the joint whistleblower award application of Claimants in connection with the Covered Action be, and it hereby is, denied.

By the Commission.

Vanessa A. Countryman
Secretary