

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
SECURITIES EXCHANGE ACT OF 1934
Release No. 98054 / August 4, 2023
WHISTLEBLOWER AWARD PROCEEDING
File No. 2023-75

In the Matter of the Claim for Award

in connection with

Redacted

Notice of Covered Action Redacted

CORRECTED ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued Preliminary Determinations recommending whistleblower awards in connection with the above-referenced Covered Action and two related actions brought by another agency (collectively, the “Related Actions”).¹ The CRS recommended that: (a) joint claimants Redacted (“Claimant 1”) and Redacted (“Claimant 2”) receive a joint whistleblower award equal to Redacted percent (*** %) of the monetary sanctions collected in the above-referenced Covered Action and Redacted percent (*** %) of the monetary sanctions collected in Related Action 1; (b) claimant (“Claimant 3”) receive an award equal to *** percent (** %) of the monetary sanctions collected in the above-referenced Covered Action and Redacted percent (** %) of the monetary sanctions collected in Related Action 1; (c) claimant Redacted (“Claimant 4”) receive an award equal to *** percent (** %) of the monetary sanctions collected in the above-referenced Covered

¹ The Commission may pay an award based on amounts collected in a related action that is based on the same original information that the whistleblower voluntarily provided to the Commission and that led the Commission to obtain monetary sanctions totaling more than \$1 million. Redacted

Redacted Here, the Commission finds that Redacted
Redacted (“Related Action 1”) and Redacted
Redacted (“Related Action 2”) Redacted constitute
“related actions” within the meaning of Exchange Act Rules 21F-3(b) and 21F-4(d)(3).

Action and ^{Redacted} percent (^{**}%) of the monetary sanctions collected in Related Action 1; (d) joint claimants ^{Redacted} (“Claimant 5”) and ^{Redacted} (“Claimant 6”) receive a joint whistleblower award equal to ^{***} percent (^{**}%) of the monetary sanctions collected in the above-referenced Covered Action and ^{Redacted} percent (^{***}%) of the monetary sanctions collected in Related Action 2²; and (e) Claimant ^{Redacted} (“Claimant 7”) receive a whistleblower award equal to ^{***} percent (^{**}%) of the monetary sanctions collected in the above-referenced Covered Action and ^{***} percent (^{***}%) of the monetary sanctions collected in Related Action 2.

The CRS also recommended the denial of the award applications from ^{Redacted} (“Claimant 8”), and ^{Redacted} (“Claimant 10”).³ Claimants 1, 2, 3, 4, 5, and 6 did not contest the Preliminary Determinations. Claimants 7, 8, and 10 submitted timely responses contesting the Preliminary Determinations.

After a review of the responses to the Preliminary Determinations and supplemental staff declarations, the CRS maintained the same recommendations with regard to Claimants 1, 2, 3, 4, 8, 9, and 10. Based upon a review of the Rule 21F-6 factors, the CRS recommended on reconsideration the same ^{**}% award in connection with the Covered Action and a lower award of ^{***}% in connection with Related Action 2 for joint Claimants 5 and 6, and the same ^{**}% award to Claimant 7 in connection with the Covered Action and a higher award of ^{***}% in connection with Related Action 2.

For the reasons discussed below, and based upon our own independent review of the materials before us, we agree with the recommendations of the CRS. Accordingly, the total aggregate award to Claimants 1, 2, 3, 4, 5, 6, and 7 in connection with the Covered Action and the two Related Actions is approximately \$104 million.

We also deny the award claims of Claimants 8 and 10.

I. Background

A. The Covered Action

On ^{Redacted} the Commission instituted settled cease-and-desist proceedings against ^{Redacted} (the “Company”), charging the Company with ^{Redacted} in ^{Redacted}

² The CRS recommended that Claimant 5’s and 6’s claim for an award in connection with Related Action 1 be denied. Because Claimants 5 and 6 did not contest the preliminary denial, the CRS’s preliminary determination as to the denial of a related action award in connection with Related Action 1 became the final order of the Commission pursuant to Exchange Act Rule 21F-11(f), 17 C.F.R. § 240.21F-11(f).

³ The CRS also recommended the denial of Claimants 9 and 11. Claimants 9 and 11 did not contest the Preliminary Determinations. Accordingly, the Preliminary Determinations with respect to each became Final Orders of the Commission through operation of Exchange Act Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f).

(“Territory A”), Redacted (“Territory B”) Redacted

Redacted The Commission also alleged that within the Company’s Redacted (“Subsidiary”) Redacted

Redacted in Redacted (“Territory C”) Redacted The Commission charged the Company with Redacted Redacted

Redacted The Company agreed to pay disgorgement and prejudgment interest totaling Redacted to settle the charges.

On Redacted the Office of the Whistleblower posted the above-referenced Notice of Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days.⁴ Claimants 1, 2, 3, 4, 5, 6, 7, 8, and 10 filed timely whistleblower award claims.

B. The Related Actions

On Redacted the Redacted (the “Other Agency”) Redacted with Redacted the Company arising from the same facts as those at issue in the Covered Action. In Related Action 1, Redacted in Territory A, agreed to pay a penalty of Redacted In Related Action 2, Redacted in Territory B, among other places, agreed to pay a penalty of Redacted Claimants 1, 2, 3, 4, 5, and 6 sought a related action award in connection with Related Action 1, and Claimants 5, 6, 7, and 8 sought a related action award in connection with Related Action 2.

C. The Preliminary Determinations

The CRS⁵ issued Preliminary Determinations⁶ recommending that: (a) joint Claimants 1 and 2 receive a joint whistleblower award equal to *** % of the monetary sanctions collected in the Covered Action and *** % of the monetary sanctions collected in Related Action 1; (b) Claimant 3 receive an award equal to ** % of the monetary sanctions collected in the Covered Action and ** % of the monetary sanctions collected in Related Action 1; (c) Claimant 4 receive

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

⁵ Rule 21F-10(d) under the Exchange Act provides that the CRS will “evaluate all timely whistleblower award claims submitted on Form WB-APP in accordance with the criteria set forth in these rules.” 17 C.F.R. § 240.21F-10(d); see also Rule 21F-11(d).

⁶ See Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d).

an award of **% of the monetary sanctions collected in the Covered Action and **% of the monetary sanctions collected in Related Action 1; (d) Claimants 5 and 6 receive a joint whistleblower award equal to **% of the monetary sanctions collected in the Covered Action and ***% of the monetary sanctions collected in Related Action 2; and (e) Claimant 7 receive a whistleblower award equal to **% of the monetary sanctions collected in the above-referenced Covered Action and ***% of the monetary sanctions collected in Related Action 2. The CRS also recommended the denial of the award claims of Claimants 8 and 10.

The CRS recommended that Claimant 8's and Claimant 10's award claims be denied on the grounds that their information did not lead 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) because none of their information caused the Commission to (i) commence an examination, (ii) open or reopen an investigation, or (iii) inquire into different conduct as part of a current Commission examination or investigation under Rule 21F-4(c)(1) of the Exchange Act; or significantly contributed to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act.

For Claimant 8, the CRS also stated that much of Claimant 8's information appeared to be derived from Claimant 8's employment as an attorney for Subsidiary, and that Exchange Act Rule 21F-4(b)(4)(i) prohibits the Commission from considering as "original information" any information derived from privileged attorney-client communication. The CRS noted that because Claimant 8's information appeared to be subject to the attorney-client privilege, much of Claimant 8's information was redacted and/or withheld by a filter team from Enforcement staff assigned to the investigation ("Investigation") that led to the Covered Action.

For Claimant 10, the CRS stated that Claimant 10 did not follow the procedures for anonymously submitting information to the Commission in connection with the TCR Claimant 10 cited as the basis for his/her award claim. Rule 21F-9(c) permits an individual to anonymously submit information to the Commission through an attorney, but prior to the attorney's submission, the individual must provide the attorney with a completed Form TCR signed by the individual under penalty of perjury. The CRS stated that there was no information in the record demonstrating that Claimant 10 provided a signed Form TCR to his/her attorney before the TCR on which Claimant 10 based his/her claim was submitted to the Commission. In addition, the CRS stated that Claimant 10 had not shown that he/she submitted any original information to the Commission. The CRS stated that Enforcement staff reviewed Claimant 10's submission and determined that Claimant 10 did not have any first-hand knowledge of the alleged misconduct and thus the staff declined to interview Claimant 10.

D. Claimant 7's Response to the Preliminary Determination

Claimant 7 submitted a timely written response contesting the CRS's Preliminary Determination.⁷ Among other things, Claimant 7 argues that he/she should be awarded at least half of the award in the Covered Action related to the misconduct in Territory B and in Related Action 2, i.e., Claimant 7 should receive an award of at least **% of the Covered Action and ***% of Related Action 2. Claimant 7 contends that without his/her internal report to the Company, there would have been no internal investigation of the Company's conduct in Territory B, nor would the Company have self-reported about that conduct to the Commission. Claimant 7 argues that under Rule 21F-4(c)(3), he/she is accordingly entitled to credit for "all of the information/results of [the Company's Territory B] internal investigation" and that the volume of information Claimant 7 provided, in conjunction with the results of the Company's internal investigation into misconduct in Territory B, would outweigh the value of information provided by Claimant 5 and Claimant 6 – and thus Claimant 7 is entitled to a larger award.

Claimant 7 further argues that his/her award was improperly decreased because the CRS relied upon inaccurate declarations and the CRS did not give Claimant 7 proper credit for whistleblower actions he/she took. For example, Claimant 7 notes that while the staff declarations indicate that Claimant 7 refused to sit for an interview, in fact Claimant 7 offered to be interviewed by Other Agency and Commission staff in ^{Redacted} and again in ^{Redacted} ^{Redacted} but neither the Other Agency nor Commission staff elected to do so. Claimant 7 provided an email to Other Agency staff in ^{Redacted} (forwarding a ^{Redacted} email from Claimant 7's counsel to Commission and Other Agency staff) which Claimant 7's counsel characterizes as "***literally begging***" (emphasis in original) Other Agency staff to contact Claimant 7 for an interview. In the ^{Redacted} email, Claimant 7's attorneys provide social media profiles for "potential witnesses whose interviews might help your investigation," including Claimant 7 and two other individuals. In the ^{Redacted} email, Claimant 7's counsel noted that their client "didn't want us to directly arrange an interview with you as that would establish a definitive link between [him/her] and the whistleblower." They suggested, "[i]f you want to talk to the whistleblower, we ***STRONGLY advise*** ^{Redacted} ***to contact directly all three people referenced in the attached*** ^{Redacted} ***email . . . and see if any of them (or at least one of them) would agree to be interviewed directly by you on these issues.***" (emphasis in original). Claimant 7's counsel provided Claimant 7's email address in connection with "one of the three [social media] bio's referenced."

Claimant 7 also claims, among other things, that the Preliminary Determinations inaccurately characterize his/her assistance to the staff when they stated that Claimant 7 "did not provide any subsequent meaningful assistance." Claimant 7 notes that he/she sent an email to

⁷ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

Other Agency and Commission staff on ^{Redacted} approximately two weeks after submitting his/her TCR, containing information and a spreadsheet that supported the allegations of misconduct in Territory B. Claimant 7 states that he/she also assisted the Company in its internal investigation by sitting for an interview with the law firm conducting the Company's internal investigation, and also by providing supplemental information to the Company.

E. Claimant 8's Response to the Preliminary Determination

Claimant 8 submitted a timely written response contesting the Preliminary Determination. Claimant 8 principally argues that, as a foreign lawyer working for the Subsidiary in ^{Redacted} the U.S. laws of privilege did not apply to Claimant 8 and that the Subsidiary waived any privilege when it asked Claimant 8 to participate in an internal investigation as a former employee. Claimant 8 also contends that he/she had "a detailed discussion with [Commission staff], who agreed that I did have highly relevant, original and valuable information which could assist the SEC in its investigation." Claimant 8 contends that he/she provided "highly relevant, original and valuable information which could assist the SEC in its investigation." As part of his/her request for reconsideration, Claimant 8 attached several documents to his/her response, including documents relating to his/her foreign legal practice certificate and the law of privilege.

F. Claimant 10's Response to the Preliminary Determination

Claimant 10 submitted a timely written response contesting the Preliminary Determination. Among other things, in his/her application for award, Claimant 10 argues that he/she was the "lead/organizing whistleblower" with other claimants to the Covered Action. In his/her response to the Preliminary Determinations, Claimant 10 claims that the attorneys representing other claimants "deceitfully excluded" Claimant 10 from their TCR submission and the attorneys "took advantage of [Claimant 10's] ignorance in order to advance [the attorneys'] interests and the interests of others." Claimant 10 also states that the attorney who submitted Claimant 10's whistleblower application "deceitfully presented [himself/herself] as more than qualified to do the required work, but proved to be careless or just incompetent, and then [he/she] resigned at the most crucial point using a phony pretext as an excuse."

Claimant 10 also argues that one of his/her prior attorneys signed an agreement preventing the attorney from "doing anything without [Claimant's] consent." Claimant 10 further argues that Claimant 10 "created the Case" and that he/she should receive "at least 15% of the award." Claimant 10 contends that without his/her findings of misconduct, "there would have been no Case whatsoever."

Claimant 10 also argues that after submitting materials to the Commission, he/she was informed by OWB to submit a TCR, which he/she did. Claimant 10 states that OWB never

alerted him/her to any mistakes in the TCR or any other mistakes Claimant 10's attorney may have made and thus never had the opportunity to "take corrective action promptly." Claimant 10 also argues that the Commission's "[p]enalty is not commensurate with the violations perpetrated by [the Company]" and Claimant 10 asks the Commission to "re-assess the penalty against [the Company] and imposes [*sic*] the maximum amount allowed by the [law]."⁸

II. Analysis

To qualify for a whistleblower award under Section 21F of the Exchange Act, an individual must voluntarily provide the Commission with original information that leads to the successful enforcement of a covered action.⁹ Under Exchange Act 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;¹⁰ or (ii) the conduct was already under examination or investigation, and the original information "significantly contributed to the success of the action."¹¹

In determining whether the information "significantly contributed" to the success of the action, the Commission will consider whether the information was "meaningful" in that it "made a substantial and important contribution" to the success of the covered action.¹² 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.¹³

⁸ Claimant 10 made additional submissions of material after the 60 day window to submit a response to the Preliminary Determinations had passed. Because those materials were not submitted in a timely manner as required by Rule 21F-10(e), we decline to include them in the record for this whistleblower proceeding.

⁹ Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

¹⁰ See Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

¹¹ See Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

¹² 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.

¹³ Exchange Act Rel. No. 85412 at 8-9.

A whistleblower will also be deemed to have provided original information that led to the successful enforcement of a covered action if the whistleblower meets all the criteria of Exchange Act Rule 21F-4(c)(3), which requires the following to be established:

- (1) the whistleblower reported original information through an entity's internal whistleblower, legal, or compliance procedures for reporting allegations of possible violations of law before or at the same time the whistleblower reported them to the Commission;
- (2) the entity later provided the information to the Commission or provided results of an audit or investigation initiated in whole or in part in response to information the whistleblower reported to the entity;
- (3) the information the entity provided to the Commission satisfies either paragraph (c)(1) or (c)(2) of [Rule 21F-4]; and
- (4) the whistleblower submitted the same information to the Commission in accordance with the procedures set forth in Rule 21F-9 within 120 days of providing it to the entity.¹⁴

A. Claimants 1 and 2

The record on reconsideration demonstrates that Claimant 1 and 2 voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action and Related Action 1. Accordingly, Claimants 1 and 2 jointly qualify for a whistleblower award.

Applying the award criteria as specified in Rule 21F-6 of the Exchange Act based on the specific facts and circumstances here, we find that a joint award of *** % of the monetary sanctions collected in the Covered Action is appropriate.¹⁵ In reaching that determination with regard to Claimants 1 and 2, we considered that Claimants 1 and 2's information in part caused the staff to open the Investigation that led to the charges addressing misconduct in Territory A, and Claimants 1 and 2 provided their information to the staff before Claimants 3 and 4, who also provided information regarding Territory A, reported their information. Claimants 1 and 2, both foreign nationals, also provided ongoing assistance as the Investigation progressed, making

¹⁴ Exchange Act Rule 21F-4(c)(3), 17 C.F.R. § 240.21F-4(c)(3).

¹⁵ In assessing the appropriate award amount, Exchange Act Rule 21F-6 provides that the Commission consider: (1) the significance of information provided to the Commission; (2) the assistance provided in the Commission action; (3) law enforcement interest in deterring violations by granting awards; (4) participation in internal compliance systems; (5) culpability; (6) unreasonable reporting delay; and (7) interference with internal compliance and reporting systems. 17 C.F.R. § 240.21F-6.

themselves available for multiple interviews in addition to providing documents supporting the allegations of misconduct. We also recognize that Claimants 1 and 2 alleged retaliation and other hardships due to their reporting to the Commission.

For these same reasons, we find that a joint award of *** % is appropriate for Claimant 1 and 2 in connection with Related Action 1.

B. Claimant 3

The record on reconsideration demonstrates that Claimant 3 voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action and Related Action 1. Accordingly, Claimant 3 qualifies for a whistleblower award.

Applying the award criteria as specified in Rule 21F-6 of the Exchange Act based on the specific facts and circumstances here, we find that an award of ** % of the monetary sanctions collected in the Covered Action is appropriate. In reaching that determination with regard to Claimant 3, we considered that although Claimant 3's information was submitted after the Investigation was already open, Claimant 3, a foreign national, provided new information regarding misconduct in Territory A. Claimant 3 also provided ongoing assistance by appearing for multiple interviews with the staff and provided key documents that helped the staff advance the Investigation. We also recognize that Claimant 3 alleged retaliation and other hardships in connection to reporting to the Commission.

For these same reasons, we find that a joint award of ** % is appropriate for Claimant 3 in connection with Related Action 1.

C. Claimant 4

The record on reconsideration demonstrates that Claimant 4 voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action and Related Action 1. Accordingly, Claimant 4 qualifies for a whistleblower award.

Applying the award criteria as specified in Rule 21F-6 of the Exchange Act based on the specific facts and circumstances here, we find that an award of ** % of the monetary sanctions collected in the Covered Action and Related Action 1 is appropriate. In reaching that determination with regard to Claimant 4, we considered that although Claimant 4's information was submitted after the Investigation was already open, Claimant 4, a foreign national, provided first-hand knowledge of events relating to misconduct in Territory A. Claimant 4 also provided ongoing assistance to the staff by providing documents and appearing for multiple interviews. We also recognize that Claimant 4 alleged retaliation and other hardships in connection to reporting to the Commission.

For these same reasons, we find that an award of **% is appropriate for Claimant 4 in connection with Related Action 1.

D. Claimants 5 and 6

The record on reconsideration demonstrates that Claimants 5 and 6 voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action and Related Action 2. Accordingly, Claimants 5 and 6 qualify for a joint whistleblower award.

Applying the award criteria as specified in Rule 21F-6 of the Exchange Act based on the specific facts and circumstances here, we find that a joint award of **% of the monetary sanctions collected in the Covered Action is appropriate. In reaching that determination with regard to Claimant 5 and 6, we considered that, although the sanctions ordered in the Covered Action focused on conduct in Territory A, Claimants 5 and 6 provided information related to misconduct in Territory B and Territory C that assisted the staff's investigation. In addition to their initial tip, Claimants 5 and 6 provided documents and lists of other potential key witnesses and an assessment of the potential witnesses' likelihood of cooperating. Claimants 5 and 6 were also interviewed by the staff over the course of several days and provided ongoing assistance as the staff's investigation continued.

For these same reasons, we find that a joint award of ***% is appropriate for Claimants 5 and 6 in connection with Related Action 2.

E. Claimant 7

The record on reconsideration demonstrates that Claimant 7 voluntarily provided original information that led to the successful enforcement of the Covered Action and Related Action 2 pursuant to Rule 21F-4(c)(3). The record shows that Claimant 7 reported internally to the Company regarding potential misconduct in Territory B, and that within 120 days of so doing, Claimant 7 reported the same information to the Commission. The Company subsequently began an internal investigation and provided information to the Commission that led to the successful enforcement of the Covered Action with regard to Territory B. Accordingly, Claimant 7 qualifies for a whistleblower award.

Applying the award criteria as specified in Rule 21F-6 of the Exchange Act based on the specific facts and circumstances here, as well as our review of Claimant 7's response to the Preliminary Determinations, we find that an award of **% of the monetary sanctions collected in the Covered Action is appropriate. The record shows that Claimant 7's information prompted the Company to begin an investigation regarding misconduct in Territory B and the results of that investigation, plus information provided by other claimants, was the basis for the charges regarding Territory B. Claimant 7 is credited with having participated in the Company's internal

compliance processes and the results of the Company's internal investigation. Unlike other meritorious claimants in this matter, however, and unlike Claimants 5 and 6, whose information also concerned Territory B, Claimant 7 did not provide ongoing assistance to the staff, and Claimant 7 was not interviewed by the staff.¹⁶ And while Claimant 7 argues that he/she should receive an award at least equal to if not greater than the award of joint Claimants 5 and 6, because the information from Claimant 7 only related to Territory B, we decline to make such an award. Claimants 5 and 6 also provided information relating to misconduct in Territory C in addition to misconduct in Territory B, whereas Claimant 7's information was limited to Territory B. Further, as noted above, Claimants 5 and 6 provided ongoing assistance to Commission staff and Other Agency staff and were interviewed over several days, while Claimant 7 was not interviewed at all. Given these factors, we find that an award of **% to Claimant 7 is appropriate.¹⁷

We also find that an award of ***% is appropriate for Claimant 7 in connection with Related Action 2. We base this award on the reasons discussed above, taking into consideration that Related Action 2 addressed misconduct in Territory B—about which Claimants 5, 6, and 7 provided information—but did not address conduct in Territory C, about which Claimants 5 and 6 but not Claimant 7 provided information. We also note that a supplemental declaration confirms that Claimant 7 was interviewed as part of an internal investigation by Subsidiary, and Subsidiary provided a summary of that information to Other Agency, which found it useful in its investigation.

¹⁶ As noted above, Claimant 7 contests the statements in the Preliminary Determinations that Claimant 7 did not offer to be interviewed, arguing that he/she “*literally begged*” (emphasis in original) to be interviewed by Commission and Other Agency staff. Claimant 7's support of this argument rests on emails from Claimant 7's counsel to Commission and Other Agency staff, suggesting that staff interview multiple individuals but declining to identify which, if any, was Claimant 7. We are not persuaded by Claimant 7's argument. In supplemental declarations, which we credit, Commission and Other Agency staff indicate that Claimant 7's suggestion that the staff interview three individuals, one of whom might be Claimant 7, was not useful and not a reasonable means of accomplishing an interview nor helpful for either the Commission or the Other Agency's investigations. Claimant 7 also contends that he/she was interviewed by Company counsel during the internal investigation, which we also considered with the other facts and circumstances of Claimant 7's provision of information. A nonprivileged, factual recitation of Claimant 7's interview was provided to the staff by Company counsel; Enforcement staff confirmed that the recitation of Claimant 7's interview indicated that Claimant 7 did not want to be interviewed by Enforcement staff, and Enforcement staff accordingly determined that further efforts to interview him/her would be unproductive.

¹⁷ Claimant 7 argues in the alternative that the CRS's recommended award to Claimants 5 and 6 and Claimant 7 in the Covered Action should be divided equally among the three individuals. We decline to accept this argument. Our whistleblower awards are allocated based on the quality of information and assistance provided by a whistleblower or group of joint whistleblowers using the factors set forth in Rule 21F-6, not simply on the raw number of whistleblowers involved. *See, e.g.*, Exchange Act Rule 21F-6(a), 17 C.F.R. § 240.21F-6(a).

F. Claimant 8

Claimant 8 does not qualify for a whistleblower award. Because significant portions of the information submitted by Claimant 8 appeared to be derived from his/her employment as an attorney for Subsidiary, the TCR and subsequent information Claimant 8 submitted was deemed potentially privileged by an Enforcement filter team and either redacted or withheld from investigative staff.

Accordingly, Claimant 8's information did not cause the staff to open the Investigation or to inquire concerning different conduct, nor did it significantly contribute to the Investigation. Claimant 8's contention in his/her response to the Preliminary Determinations that his/her information is not privileged is not relevant—the staff did not review significant portions of Claimant 8's information and thus Claimant 8's information did not lead to the success of the Covered Action. As to Claimant 8's contention in his/her response that staff said Claimant 8's information was “highly relevant” and “valuable,” staff indicated in a supplemental declaration, which we credit, that while the staff spoke briefly with Claimant 8, the purpose of the conversation was to determine the nature of Claimant 8's employment responsibilities at Subsidiary. When the staff learned of Claimant 8's role as an in-house counsel, the staff ceased the conversation so as not to infringe upon any attorney-client communication.¹⁸

For these reasons, Claimant 8 is not eligible for an award.

G. Claimant 10

Claimant 10 does not qualify for an award. The requirement of Exchange Act Rule 21F-9 to submit a tip in the prescribed manner on Form TCR serves important functions and is critical to the trackability, management, and reliability of tips.¹⁹ Rule 21F-9(b) requires that for a claimant to be eligible for an award, the claimant must declare “under penalty of perjury at the time you submit your information . . . that your information is true and correct to the best of your

¹⁸ Claimant 8 also argues that his/her information was not privileged. Because Claimant 8's information was withheld from investigative staff based on a belief that it was potentially privileged, investigative staff did not review significant portions of it. As a result, whether or not it was privileged, the information did not lead to the success of the Covered Action.

¹⁹ See Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 94398 (March 11, 2022) at 3 (“The programmatic purposes of requiring whistleblowers to submit their information on Form TCR or through the online TCR portal include: allowing the Commission to promptly determine whether an individual who submits information is subject to heightened whistleblower confidentiality protections; helping the staff efficiently process the information and other documentation provided by the individual and assess its potential credibility; and assisting the Commission in eventually evaluating the individual's potential entitlement to an award. Also, by submitting a tip on Form TCR, the submitter declares under penalty of perjury that the information is true and correct to the best of the submitter's knowledge and belief. A tip that bypasses the TCR System may not contain the sworn declaration under penalty of perjury as to the veracity of the information.”).

knowledge and belief.” Rule 21F-9(c) requires that for anonymous submitters, “[p]rior to your attorney’s submission, you must provide your attorney with a completed Form TCR that you have signed under penalty of perjury.” And when the attorney makes the anonymous submission, the attorney is required to certify that the attorney has verified the submitter’s identity, reviewed the Form TCR for completeness and accuracy, and obtained the claimant’s “non-waiveable consent to provide the Commission with your original completed and signed Form TCR in the event that the Commission requests it.”

Claimant 10 does not meet this requirement. Claimant 10 relies upon the ^{Redacted} submission of a TCR (the “First TCR”) as the basis for his/her award application. The First TCR lists two anonymous whistleblowers and one “corroborating witness”; Claimant 10 does not claim to be any of those individuals, and when asked by OWB, Claimant 10 did not provide a copy of the First TCR signed under penalty of perjury. Under this threshold requirement, Claimant 10 does not meet the definition of a whistleblower. Claimant 10’s response to the Preliminary Determinations does not support a finding to the contrary.

In addition, Claimant 10’s information did not lead to the success of the Covered Action. Because Claimant 10 was not identified in the First TCR, Claimant 10 was unknown to the staff until Claimant 10 submitted another TCR over one year later (the “Second TCR”) claiming to be the “lead/organizing whistleblower” of the First TCR. The record shows that the staff determined that Claimant 10 did not have first-hand knowledge of the conduct alleged in the First TCR and did not interview Claimant 10 during the Investigation.²⁰ Nor did the staff find the Second TCR to be helpful for its investigation. Accordingly, Claimant 10’s information did not cause the staff to open the Investigation or to inquire concerning different conduct, nor did it significantly contribute to the Investigation.²¹

²⁰ The record also does not show that Claimant 10 provided original information to the Commission. Original information may be based on either independent knowledge or independent analysis. Claimant 10 does not indicate what nonpublic information he/she gathered or contributed to the First TCR. Claimant 10 similarly does not show what independent analysis he/she provided. While Claimant 10 argues that he/she spent significant time researching and investigating misconduct in Territory A, Claimant 10 does not provide evidence showing how that research impacted the First TCR or the Covered Action. Nor does Claimant 10 show how the information “bridge[d] the gap” between the publicly available information and the potential violations of the federal securities laws. *See Whistleblower Rules Amendments Adopting Release*, 85 Fed. Reg. 70898, 70928 (Nov. 5, 2020) (discussing independent analysis). Furthermore, Claimant 10’s Second TCR did not provide any substantive additional information and referred back to the First TCR.

²¹ We are not persuaded by other arguments in Claimant 10’s response to the Preliminary Determinations. The record does not support the contention that Claimant 10 was wrongfully excluded from the First TCR. Declarations from the submitters of the First TCR state that Claimant 10 provided no information that was used in the First TCR. Claimant 10 also argues in his/her response to the Preliminary Determinations that Claimant 10 was told by Claimant 10’s former attorney that “only persons can be whistleblowers, and not legal entities.” Claimant 10’s

For these reasons, Claimant 10 is not eligible for an award.

III. Conclusion

Accordingly, it is hereby ORDERED that (1) joint Claimants 1 and 2 receive a joint whistleblower award equal to ***% of the monetary sanctions collected in the Covered Action and ***% of the monetary sanctions collected in Related Action 1; (b) Claimant 3 receive an award equal to **% of the monetary sanctions collected in the Covered Action and **% of the monetary sanctions collected in Related Action 1; (c) Claimant 4 receive an award equal to **% of the monetary sanctions collected in the Covered Action and **% of the monetary sanctions collected in Related Action 1; (d) joint claimants Claimant 5 and Claimant 6 receive a joint whistleblower award equal to **% of the monetary sanctions collected in the above-referenced Covered Action and ***% of the monetary sanctions collected in Related Action 2; and (e) Claimant 7 receive a whistleblower award equal to **% of the monetary sanctions collected in the above-referenced Covered Action and ***% of the monetary sanctions collected in Related Action 2.

It is further ORDERED that Claimant 8's and Claimant 10's whistleblower award applications in the Covered Action be, and hereby are, denied.²²

By the Commission.

J. Matthew DeLesDernier
Deputy Secretary

arguments regarding whether an individual or entity could qualify as a whistleblower are irrelevant; as noted above, the CRS did not recommend denying Claimant 10's application for award on these grounds.

²² To the extent that Claimants 8 and 10 applied for related action awards, because Claimants 8 and 10 do not qualify for an award in the Covered Action, Claimants 8 and 10 are not eligible for a related action award in connection with Related Action 1 or Related Action 2. A related action award may be made only if, among other things, the claimant satisfies the eligibility criteria for an award for the applicable covered action in the first instance. See 15 U.S.C. § 78u-6(b); Exchange Act Rule 21F-3(b), (b)(1); Rule 21F-4(g) and (f), and Rule 21F-11(a); Order Determining Whistleblower Award Claims, Release No. 34-84506 (Oct. 30, 2018); Order Determining Whistleblower Award Claims, Release No. 34-84503 (Oct. 30, 2018).