

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97438 / May 5, 2023

WHISTLEBLOWER AWARD PROCEEDING
File No. 2023-55

In the Matter of the Claims for Award

in connection with

Redacted

Redacted

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending that: (1) Redacted (“Claimant 1”) receive a whistleblower award in the amount of Redacted percent (*** %) of the monetary sanctions collected in (i) Redacted (“Covered Action”), (ii) Redacted (“Related Action 1”),¹ and (iii) Redacted (“Related Action 2”);² (2) Redacted (“Claimant 2”) be denied a whistleblower award; and (3) Redacted

¹ Rule 21F-11(a) of the Securities Exchange Act of 1934 (“Exchange Act”) provides that, “If you are eligible to receive an award following a Commission action that results in monetary sanctions totaling more than \$1,000,000, you also may be eligible to receive an award based on the monetary sanctions that are collected from a related action.” 17 C.F.R. § 240.21F-11(a).

² The Preliminary Determination recommended that Related Action 1 and Related Action 2 (collectively, “Related Actions”) be deemed “related actions” under Rules 21F-3(b)(1) and Redacted

(“Claimant 3”) be denied a whistleblower award.³ The award to Claimant 1 will result in a payment of approximately \$279 million.⁴

Claimant 1 provided written notice of his/her decision not to contest the Preliminary Determination. Claimant 2 and Claimant 3 filed timely responses contesting the Preliminary Determination. For the reasons discussed below, the CRS’s recommendations are adopted.

I. Background

A. The Covered Action and the Related Actions

On ^{Redacted} the Commission brought the Covered Action in the ^{Redacted} (“Court”). The Covered Action charged ^{Redacted} (“Company”) with ^{Redacted} by engaging in ^{Redacted} The Covered Action alleged that ^{Redacted} ^{Redacted} ^{Redacted} ^{Redacted} ^{Redacted} The Covered Action also alleged that ^{Redacted} ^{Redacted} ^{Redacted}

On ^{Redacted} the Court entered a final judgment against the Company that resolved the Covered Action. Among other things, the Company was ordered to pay disgorgement of ^{Redacted} and prejudgment interest of ^{Redacted} The disgorgement and prejudgment interest, which totaled ^{Redacted} has been paid in full.

In ^{Redacted} ^{Redacted} (“Other Agency”) brought the Related Actions in the Court. The Other Agency’s ^{Redacted} related to the same ^{Redacted} the Commission charged in the Covered Action.⁵

³ The Preliminary Determination concluded that because Claimant 2 and Claimant 3 were not eligible for awards in the Covered Action, they were not eligible for awards in the Related Actions.

⁴ The CRS also preliminarily determined to recommend that the award application of one other claimant be denied. That claimant did not submit a request for reconsideration and, as such, the Preliminary Determination with respect to this claimant became the Final Order of the Commission, pursuant to Rule 21F-10(f).

⁵ The Other Agency charged the Company for misconduct ^{Redacted} however, unlike the Commission, the Other Agency did not charge the Company for

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Related Action 1
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paid in full. In Related Action 2

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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.⁷ Claimants filed timely whistleblower award claims.

B. The Preliminary Determination

The CRS issued a Preliminary Determination⁸ recommending that the Commission: grant Claimant 1 an award equal to Redacted percent (*** %) of the monetary sanctions collected in the Covered Action and the Related Actions; and deny the award claims of Claimant 2 and Claimant 3 in the Covered Action and the Related Actions.⁹

C. The Preliminary Determination as to Claimant 2

The Preliminary Determination recommended that the Commission deny Claimant 2’s claim because none of Claimant 2’s information 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. The CRS preliminarily concluded that Claimant 2’s information did not either (1) cause the Commission to commence an examination, open or

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⁷ See Exchange Act Rule 21F-10(a), 17 C.F.R. § 240.21F-10(a).
⁸ See Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d).
⁹ The record supporting the Preliminary Determination included the declaration (“Declaration”) of one of the Division of Enforcement (“Enforcement”) attorneys who was assigned to the investigation that led to the Covered Action (“Investigation”). See Exchange Act Rule 21F-12(a), 17 C.F.R. § 240.21F-12(a).

reopen an investigation, or inquire into different conduct as part of a current Commission examination or investigation under Rule 21F-4(c)(1); or (2) significantly contribute to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2).

The CRS also preliminarily concluded that Rule 21F-4(c)(3) did not apply. Under Rule 21F-4(c)(3), an individual provides original information that led to the successful enforcement of a judicial or administrative enforcement action where: (1) the individual reported “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 individual] reported them to the Commission”; (2) “the entity later provided [the individual’s] information to the Commission, or provided results of an audit or investigation initiated in whole or in part in response to information [the individual] reported to the entity”; and (3) “the information the entity provided to the Commission satisfies either” Rule 21F-4(c)(1) or Rule 21F-4(c)(2).¹⁰ Additionally, under Rule 21F-4(c)(3), the individual “must also submit 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.”

D. Claimant 2’s Response to the Preliminary Determination

Claimant 2 submitted a timely, written response contesting the Preliminary Determination.¹¹ Claimant 2 argues that he/she qualifies for an award under Rule 21F-4(c)(1). Claimant 2 argues that his/her information caused the Commission to open the Investigation. Claimant 2 speculates that his/her allegations about Redacted at least partially motivated the Commission’s decision to convert its matter under inquiry regarding the Company (“MUI”) into the Investigation. Claimant 2 also argues that he/she qualifies for an award under Rule 21F-4(c)(3) because he/she reported information to the Commission within 120 days of reporting it to the Company.

E. The Preliminary Determination as to Claimant 3

The Preliminary Determination recommended that the Commission deny Claimant 3’s claim because none of Claimant 3’s information 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. The CRS preliminarily concluded that Claimant 3’s information did not either (1) cause the Commission to commence an examination, open or reopen an investigation, or inquire into different conduct as part of a current Commission examination or investigation under Rule 21F-4(c)(1); or (2) significantly contribute to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2).

¹⁰ Exchange Act Rule 21F-4(c)(3), 17 C.F.R. § 240.21F-4(c)(3).

¹¹ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

The CRS preliminarily determined that Claimant 3's information concerned ^{Redacted} ^{Redacted} that was unrelated to the Investigation and the conduct charged in the Covered Action.

F. Claimant 3's Response to the Preliminary Determination

Claimant 3 submitted a timely, written response contesting the Preliminary Determination.¹² Claimant 3 alleges that the ^{Redacted} charged in the Covered Action is the same ^{Redacted} that Claimant 3 identified to the Commission. Claimant 3 states that he/she provided extensive information and documentation about the Company's illicit activities. Claimant 3 argues that even though his/her information concerned alleged misconduct from ^{Redacted} and the Covered Action concerned misconduct from ^{Redacted} Claimant 3's information was still relevant to the Commission and the charges in the Covered Action.

II. Analysis

A. Claimant 1

The record demonstrates that Claimant 1 voluntarily provided original information to the Commission,^{***} and Claimant 1's original information led to the successful enforcement of the Covered Action.¹⁴ The record reflects that: (1) Claimant 1's information was significant, as it caused Enforcement staff responsible for the Covered Action ("Staff") to expand the Investigation from ^{Redacted} (2) Claimant 1's information saved the Commission significant time and resources; and (3) Claimant 1 provided substantial, ongoing assistance, which included multiple written submissions, communications,

¹² *Id.*

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¹⁴ *See* Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1); Exchange Act Rule 21F-3(a), 17 C.F.R. § 240.21F-3(a).

and interviews. While Claimant 1's information was important, it was submitted after the Investigation had already been opened and after Staff had already become aware of potential misconduct by the Company ^{Redacted}. Further, Claimant 1's specific information only related to certain of the conduct that the Commission ultimately charged in the Covered Action.

In light of these considerations and the relevant factors specified in Rule 21F-6,¹⁵ it is appropriate that Claimant 1 receive an award of ^{Redacted} percent (^{***} %) of the monetary sanctions collected in the Covered Action.

We also find that the Related Actions constitute "related actions" under Rules 21F-3(b)(1) and ^{Redacted} and that Claimant 1 has satisfied the requirements of Rules 21F-3(b)(2) and ^{Redacted} for related action awards. The Related Actions were based in part on the same original information that Claimant 1 voluntarily provided to the Commission. Specifically, Claimant 1 voluntarily provided original information to the Commission, which was also provided to the Other Agency, and Claimant 1's information led to the successful enforcement of the Related Actions.

In light of the considerations discussed above, it is appropriate that Claimant 1 receive an award of ^{Redacted} percent (^{***} %) of the monetary sanctions collected in the Related Actions.

B. Claimant 2

We deny an award to Claimant 2. 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.¹⁶ Claimant 2 did not provide the Commission with such information. Because Claimant 2 is not eligible for an award in the Covered Action, Claimant 2 is not eligible for an award in the Related Actions.¹⁷

Claimant 2's information did not either (1) cause the Commission to commence an examination, open or reopen an investigation, or inquire into different conduct as part of a current Commission examination or investigation;¹⁸ or (2) significantly contribute to the success

¹⁵ In determining the amount of the award to Claimant 1, we considered the following factors set forth in Rule 21F-6 as they apply to the facts and circumstances of Claimant 1's application: (1) the significance of information provided; (2) the assistance provided; (3) the 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.

¹⁶ Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

¹⁷ See Exchange Act Rule 21F-3(b)(1), (b)(2), 17 C.F.R. § 240.21F-3(b)(1), (b)(2); Exchange Act Rule 21F-11(a), 17 C.F.R. § 240.21F-11(a).

¹⁸ See Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

of a Commission judicial or administrative enforcement action.¹⁹ We credit the Declaration, provided under penalty of perjury, which confirms that Claimant 2's information did not advance or impact the Investigation. None of Claimant 2's information was used in, nor had any impact on, the charges brought in the Covered Action. Further, the Covered Action did not contain any allegations ^{Redacted} which was the subject of Claimant 2's information.

Claimant 2 contests these conclusions, asserting that his/her information about alleged ^{Redacted} at least partially motivated the decision for the MUI to be converted into the Investigation. Claimant 2's arguments about this point are largely focused on the chronology of events related to the Commission's investigative work and how such events were purportedly affected by Claimant 2's information. Such arguments, however, are nothing more than speculation and are belied by the record.

As confirmed by the Declaration, in ^{Redacted} Staff opened the MUI based on ^{Redacted} ^{Redacted} ^{Redacted} Staff opened the MUI to investigate whether the Company ^{***} ^{Redacted} Shortly after opening the MUI, Staff for the first time obtained and reviewed information that Claimant 2 had submitted to the Commission in ^{Redacted} On or about ^{Redacted} Staff sent the Company a voluntary request seeking information and documents about certain matters, including alleged ^{Redacted} based on Claimant 2's allegations.

On or about ^{Redacted} the MUI was converted to the Investigation. A supplemental declaration ("Supplemental Declaration") of one of the Enforcement attorneys who was assigned to the Investigation, which we credit, confirms under penalty of perjury that Staff converted the MUI to the Investigation after Staff received a presentation from the Company on or about ^{***} ^{Redacted} ("Company Presentation"). During the Company Presentation, Staff learned new information from the Company that was relevant to Staff's inquiry into the Company. The Company Presentation did not concern any of Claimant 2's information or allegations. The Company Presentation also did not concern any alleged misconduct ^{Redacted} Accordingly, none of Claimant 2's information had any effect on the conversion of the MUI to the Investigation.

Later in ^{Redacted} Staff contacted Claimant 2's counsel to discuss Claimant 2's allegations; during that discussion, Staff did not learn any new information from Claimant 2's counsel. On or about ^{Redacted} Staff obtained a Formal Order of Investigation. The Declaration and Supplemental Declaration both confirm that Claimant 2's information had no

¹⁹ See Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

bearing on the opening of the MUI, the opening of the Investigation, or the issuance of the Formal Order of Investigation.

Additionally, Rule 21F-4(c)(3) does not apply here. *First*, Claimant 2 did not report his/her information through the Company's internal whistleblower, legal, or compliance procedures for reporting allegations of possible violations of law before or at the same time that Claimant 2 reported them to the Commission. Instead, Claimant 2 first submitted his/her information to the Commission in ^{Redacted} Claimant 2 then reported his/her information to the Company at the end of ^{Redacted} Claimant 2 then sent a supplemental submission to the Commission in ^{Redacted} This supplemental submission was comprised of copies of an anonymous email that Claimant 2 sent to the Company in ^{Redacted} and ^{Redacted} email ^{***} that Claimant 2 received in response from the Company. The substance of Claimant 2's ^{***} information was the same as the substance of Claimant 2's ^{Redacted} information. Thus, Claimant does not satisfy the temporal requirements of Rule 21F-4(c)(3).²⁰

Second, the Company did not initiate an audit or investigation in whole or in part in response to the information Claimant 2 reported to the Company. As confirmed by the Declaration, the Company began internal investigative work not in response to any tip or other information provided by Claimant 2, but rather in response to two internal complaints the Company received in ^{Redacted} regarding alleged ^{Redacted} ^{Redacted} There is no support in the record for Claimant 2's supposition that Claimant 2's information prompted the Company to undertake investigative work because ^{Redacted} email from the Company stated that ^{Redacted} ^{Redacted} thereby allegedly suggesting that the Company was in the process of investigating Claimant 2's allegations.²¹

Claimant 2's other arguments are unavailing. Claimant 2's complaint that the record does not suitably explain why Claimant 2's allegations about misconduct ^{Redacted} lacked merit is misguided. As confirmed by the Declaration, Staff found no merit to Claimant 2's allegations

²⁰ Claimant 2 asserts that being required to report his/her information to the Company first before coming forward to the Commission would have forced him/her to expose himself/herself to retaliation at the cost of making a report. Such concerns, however, were not present here. Claimant 2 indicated in his/her whistleblower award application that ^{Redacted}

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²¹ In the alternative, Claimant 2 argues that the Commission should exercise its discretion to waive any timing requirement under Rule 21F-4(c)(3) that Claimant 2 report internally before reporting to the Commission. In light of the factual record in this matter, there is no reason to waive the timing requirement of Rule 21F-4(c)(3) in our discretion or to invoke our Section 36(a) exemptive authority, as Claimant 2 does not satisfy the other requirements under Rule 21F-4(c)(3).

about alleged misconduct ^{Redacted} after reviewing information and documentation supplied by Claimant 2 and the Company. Neither the Covered Action nor the Related Actions concerned any misconduct ^{Redacted}. Further, Claimant 2’s complaint that the allegations related to ^{Redacted}—which prompted Staff to investigate the Company—purportedly lacked legitimacy is irrelevant. Regardless of the veracity of the ^{Redacted} allegations, those allegations are what prompted Staff to begin its investigative work into the Company, not Claimant 2’s information. Further, Claimant 2’s unsupported assertion that his/her information revealed important information about how the Company ^{Redacted} that was also present in the Covered Action is belied by the Declaration. The Declaration confirms that none of Claimant 2’s information was used in, nor had any impact on, the charges brought in the Covered Action.

Claimant 2 points to a prior final order in which we awarded a claimant even though there was “not a strong nexus between the [c]laimant’s information” and the resulting charges in the covered action.²² The specific facts involved in that other final order, however, are not comparable to the facts involved here. Unlike the other final order, Claimant 2’s information did not prompt the Commission to begin its investigation of the Company; further, nothing about Claimant 2’s information regarding alleged misconduct ^{Redacted} led the Commission to begin an investigation that revealed misconduct ^{Redacted}.

Finally, Claimant 2 complains about the alleged completeness of the record and requests that the Commission provide Claimant 2 with certain investigative files, including the opening narrative for the Investigation, the voluntary request that was sent to the Company in ^{Redacted} ^{***} and third-party communications concerning Claimant 2’s information.²³ However, Claimant 2 is not entitled to these extra-record materials. We have appropriately considered all materials contemplated by the whistleblower program rules in reaching our conclusion to deny Claimant 2 an award.²⁴

²² See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 91933 (May 19, 2021).

²³ Claimant 2 states that he/she made a Freedom of Information Act (“FOIA”) request for such materials as part of his/her whistleblower award application submitted to OWB in ^{Redacted}. FOIA requests must be submitted to the Commission’s Office of FOIA Services (“OFS”), the centralized unit that handles all FOIA requests for the Commission and whose website provides procedures on submitting requests directly to OFS. See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 95714 (Sept. 9, 2022) (same).

²⁴ The whistleblower program rules state that the record upon which an award determination is made shall consist of sworn declarations provided by the relevant Commission staff, in addition to the publicly available materials related to the Covered Action, the claimant’s tip, the claimant’s award application, and any other materials timely submitted by the claimant in response to the Preliminary Determination. See Exchange Act Rule 21F-12(a), 17 C.F.R. § 240.21F-12(a). There is no basis to disregard Rule 21F-12(a) and expand the record to include the Commission’s law enforcement files (as requested by Claimant 2), which is generally prohibited by Rule 21F-12(b). See Exchange Act Rule 21F-12(b), 17 C.F.R. § 240.21F-12(b) (“These rules do not entitle claimants to obtain from the Commission any materials (including any pre-decisional or internal deliberative process materials that are prepared exclusively to assist the Commission in deciding the claim) other than those listed in paragraph (a) of this

C. Claimant 3

We deny an award to Claimant 3. 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.²⁵ Claimant 3 did not provide the Commission with such information. Because Claimant 3 is not eligible for an award in the Covered Action, Claimant 3 is not eligible for an award in the Related Actions.²⁶

Claimant 3's information did not either (1) cause the Commission to commence an examination, open or reopen an investigation, or inquire into different conduct as part of a current Commission examination or investigation;²⁷ or (2) significantly contribute to the success of a Commission judicial or administrative enforcement action.²⁸ We credit the Declaration, provided under penalty of perjury, which confirms that Claimant 3's information concerned

Redacted that was unrelated to the Investigation and the conduct charged in the Covered Action. Redacted purportedly transpired from Redacted when Claimant 3 Redacted

Redacted However, the Redacted Redacted investigated by Staff and charged in the Covered Action concerned different misconduct that transpired from Redacted

Redacted Claimant 3 had no current information about the Company or any conduct it engaged in Redacted Additionally, Staff did not open the Investigation based on Claimant 3's information. Claimant 3's information was not used in, and did not have any impact on, the charges brought by the Commission in the Covered Action.

None of Claimant 3's arguments demonstrate why we should reach a different conclusion. There was no connection between Claimant 3's Redacted and the Redacted charged in the Covered Action. Nothing in the record supports Claimant 3's contention that Claimant 3's alleged Redacted was the same misconduct charged by the Commission and the Other Agency merely because there was temporal overlap with the misconduct that the Other Agency charged (*i.e.*, from Redacted

Claimant 3's other arguments are of no import. While the Declaration indicates that Claimant 3 provided information about a Company subsidiary called Redacted ("Subsidiary"), the Declaration does not state that Claimant 3 solely provided information about

section [*i.e.*, Rule 21F-12(a)]."

²⁵ Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

²⁶ See Exchange Act Rule 21F-3(b)(1), (b)(2), 17 C.F.R. § 240.21F-3(b)(1), (b)(2); Exchange Act Rule 21F-11(a), 17 C.F.R. § 240.21F-11(a).

²⁷ See Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

²⁸ See Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

the Subsidiary and did not provide information about anything else, contrary to Claimant 3's contentions. Further, there is no support in the record for Claimant 3's assertion that the Preliminary Determination implicitly acknowledged that Claimant 3 provided original information merely because it did not specifically state that Claimant 3's information was not original information. We conclude that there is nothing in the record that indicates that Claimant 3 provided any original information to the Commission that led to or significantly contributed to the underlying Covered Action.

Claimant 3 also takes issue with the Declaration's statement that Claimant 3's information about ^{Redacted} did not advance the Commission's or the Other Agency's investigations and had no bearing on the Covered Action or the Related Actions. According to the Declaration, the ^{Redacted} provided by Claimant 3 were ^{Redacted} did not point to any additional evidence or advance the Commission's or the Other Agency's investigations. Further, Claimant 3's information about ^{Redacted} ^{Redacted} was not useful, as ^{Redacted} was not involved in the conduct charged in the Covered Action.

There is also no merit to the other arguments Claimant 3 raised in his/her response contesting the Preliminary Determination.²⁹ As such, we conclude that it is appropriate to deny an award to Claimant 3.

²⁹ Claimant 3 complains that his/her initial ^{Redacted} submission of information was not initially properly categorized by the Commission. After the Commission received Claimant 3's tip, it was categorized with a disposition of "no further action" ("NFA") because Claimant 3's allegations were vague and/or insubstantial. However, Staff subsequently reviewed Claimant 3's initial submission during Staff's investigative work, reviewed all of Claimant 3's ensuing submissions of information during the Investigation, and met with Claimant 3 and his/her counsel during in-person meetings in ^{***} According to Staff, none of the information provided by Claimant 3 at any point in time advanced or impacted the Investigation or Covered Action. Claimant 3 also argues that the Declaration incorrectly asserted that the individuals Claimant 3 identified as potentially responsible for certain alleged misconduct no longer worked at the Company at the time of the Investigation. Claimant 3 alleges that many of the executives he/she identified to the Commission were still signing Company filings during the course of the Investigation. Despite Claimant 3's assertions, the Declaration affirms that none of the individuals that Claimant 3 identified were involved in the conduct investigated by Staff or charged in the Covered Action. Finally, Claimant 3's contention that he/she displayed great dedication and perseverance in providing his/her information is immaterial to our determination that Claimant 3 did not provide qualifying information that would entitle him/her to an award. The record conclusively demonstrates that none of Claimant 3's information was used in, nor had any impact on, the charges brought by the Commission in the Covered Action.

III. Conclusion

Accordingly, it is hereby ORDERED that: (1) Claimant 1 shall receive an award of ^{Redacted} percent (^{***} %) of the monetary sanctions collected in the Covered Action and the Related Actions; and (2) the whistleblower applications of Claimant 2 and Claimant 3 in connection with the Covered Action and the Related Actions be, and hereby are, denied.

By the Commission.

Vanessa A. Countryman
Secretary