

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 84506 / October 30, 2018

WHISTLEBLOWER AWARD PROCEEDING

File No. 2019-1

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In the Matter of the Claim for Award

in connection with

Redacted

Notice of Covered Action <sup>Redacted</sup>

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS**

For the reasons discussed below, we deny the whistleblower award applications that have been submitted by <sup>Redacted</sup> (“Claimant 1”), <sup>Redacted</sup> (“Claimant 2”) and <sup>Redacted</sup> (“Claimant 3”) in connection with the above-referenced Notice of Covered Action.<sup>1</sup> See Section 21F(b) and (c) of the Securities Exchange Act of 1934 (“Exchange Act”); Exchange Act Rule 21F-10, 17 C.F.R. § 240.21F-10.

**A. Background**

In <sup>Redacted</sup> the Commission’s Enforcement Division opened an investigation based on a self-report <sup>Redacted</sup> (the “Company”) concerning potential securities-law violations. The Company thereafter undertook a global internal investigation and, by the end of <sup>Redacted</sup> the Enforcement Division staff and the Company had reached agreement in principle on the terms of a proposed settlement that would be put before the Commission for its consideration. However, the staff determined to delay its recommendation pending <sup>Redacted</sup>

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<sup>1</sup> Three other individuals also submitted award applications in connection with the Notice of Covered Action. However, these individuals did not timely contest the preliminary denial of their claims and, as such, the Preliminary Determination with respect to their award claims became the Final Order of the Commission through operation of Exchange Act Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f).

Redacted

Redacted

Approximately one year later, on Redacted Claimant 1 made a whistleblower submission to the Commission; this submission was followed by a supplemental submission from Claimant 1 on Redacted

On Redacted Claimant 2 made a whistleblower submission to the Commission, which was followed on Redacted by an additional submission from Claimant 2.

On Redacted Claimant 3 made a whistleblower submission to the Commission.

On Redacted each of the Claimants, Redacted Redacted Redacted

Less than a month later, on Redacted the Commission filed a settled action against the Company with no material changes to the terms of the settlement that the staff in Redacted had determined to recommend to the Commission.

Following the successful resolution of the Covered Action, the Office of the Whistleblower posted the Notice of Covered Action to commence the 90-day period for interested individuals to file award applications. See Exchange Act Rule 21F-10(b), 17 C.F.R. § 240.21F-10(b). The Claimants made timely award applications based on the above-mentioned whistleblower submissions.

After reviewing their award applications and the relevant record as compiled by the Office of the Whistleblower, the Claims Review Staff (“CRS”) issued a Preliminary Determination recommending a denial for all three award applications. As the Preliminary Determination explained, none of the information provided by any of the Claimants led to the successful enforcement of the Covered Action within the meaning of Section 21F(b)(1) of the Exchange Act and Exchange Act Rules 21F-3(a)(3), 17 C.F.R. § 240.21F-3(a)(3), and 21F-4(c), 17 C.F.R. § 240.21F-4(c).<sup>2</sup> In reaching this preliminary recommendation, the CRS relied on a declaration from one of the principal staff attorneys responsible for both the investigation and the settlement discussions who stated under

<sup>2</sup> As relevant here, information leads to the success of a covered action if it: (1) causes 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 (2) significantly contributes to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act.

penalty of perjury that any new information provided by the three Claimants did not in the staff's view warrant further investigation or revisiting the terms of the proposed settlement.

The Claimants—all individually represented by the same Counsel—subsequently filed effectively identical, timely written responses contesting the Preliminary Determination. Each of the responses expressly requested that the Commission supplement the administrative record to address “whether there were [staff-Company] communications about our client’s information and, if so, what they were.” The responses each went on to state that, “if there were no such communications, we would be inclined to agree with the [CRS’s] Preliminary Determination[.]” The responses did not raise any other factual or legal arguments to challenge the Preliminary Determination.

## **B. Analysis**

After careful consideration of the administrative record, including the Claimants’ written responses and a supplemental declaration from the above-referenced staff attorney, we have determined to deny the Claimants’ award applications.<sup>3</sup> As to the “very specific factual point” that had been the sole basis of the Claimants’ objection to the Preliminary Determination, we find that the Enforcement staff and the Company did not communicate regarding the Claimants’ submissions. We credit the sworn declaration of the Enforcement staff responsible for the investigation that there are no records of any such communications; and we further find based on the staff’s declaration that such records would exist had any of the Claimants’ submissions surfaced new information that was important for the investigation or the proposed settlement with the Company. This conclusion is further supported by the following statements in the sworn declaration of the investigative staff member: (1) each of the Claimants’ submissions was received at least a year after the staff and the Company had reached agreement in principle on a settlement to propose to the Commission and; (2) none of these submissions added anything of consequence to the then-existing thorough investigative record, which included the staff’s multi-year investigation and a global internal investigation by the Company.

In light of the foregoing, we find that the Claimants are not entitled to an award because the record conclusively demonstrates that the Claimants’ information was not used in connection with the Covered Action and, thus, did not lead to the successful enforcement of the Covered Action. The record demonstrates that the Enforcement staff opened the underlying investigation of the Company in <sup>Redacted</sup> as a result of the Company’s self-reporting of potential violations and that the terms of the proposed settlement in the

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<sup>3</sup> We credit as true the statements in the original declaration and the supplemental declaration from the staff attorney and adopt the statements therein as our findings of fact.

Covered Action were reached in principle in <sup>Redacted</sup>—all well before any of the Claimants made their submissions to the Commission. *See* Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1). Further, the supplemental declaration demonstrates that the Claimants’ information did not significantly contribute to the success of the Covered Action, as their information was not used in the investigation, including in the settlement discussions with the Company that ultimately resulted in the successful enforcement of the Covered Action. *See* Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2). <sup>4</sup>

**C. Conclusion**

Accordingly, it is hereby ORDERED that the Claimants’ claims for awards are denied.<sup>5</sup>

By the Commission.

Brent J. Fields  
Secretary

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<sup>4</sup> We note that the staff sent the settlement recommendation to the Commissioners to begin their consideration of the proposal on <sup>Redacted</sup>—only eight days after <sup>Redacted</sup> information <sup>Redacted</sup>. This short period further undermines the suggestion that any <sup>Redacted</sup> could have played any part in the successful resolution of the Covered Action. Further, the record demonstrates that there were no changes to the staff’s settlement recommendation during this time period.

<sup>5</sup> Pursuant to Exchange Act Rule 21F-11, 17 C.F.R. § 240.21F-11, the Claimants seek an award in connection with a potential related action. The related-action award applications are denied. The Commission may make an award to a whistleblower in connection with a related action *only if* the Commission has determined that the whistleblower is entitled to an award for a Commission covered action. *See* Rule 21F-11(a); *see also* Rule 21F-3(b)(1).