

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 90864 / January 7, 2021

WHISTLEBLOWER AWARD PROCEEDING

File No. 2021-20

In the Matter of the Claims for Award

in connection with

Redacted

Notice of Covered Action Redacted

and

Redacted

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued Preliminary Determinations recommending that the Commission award Redacted (“Claimant 1”) over \$170,000, equal to Redacted percent (%) of monetary sanctions collected in Notice of Covered Action Redacted relating to Redacted (“First Covered Action”); award Redacted (“Claimant 2”) over \$170,000, equal to Redacted percent (%) in the First Covered Action; and to deny an award to Redacted (“Claimant 3”) in the First Covered Action. Claimants 1, 2, and 3 provided written notice that they would not contest the Preliminary Determinations issued in the First Covered Action.

The CRS also issued Preliminary Determinations recommending that the Commission award Claimant 1 nearly \$70,000, equal to Redacted percent (%) of monetary sanctions currently collected in Notice of Covered Action Redacted relating to Redacted

Redacted (“Second Covered Action”); award Claimant 2 nearly \$70,000, equal to

Redacted percent (%) of monetary sanctions currently collected in the Second Covered Action; and to award Claimant 3 almost \$10,000, equal to percent (%) of monetary sanctions currently collected in the Second Covered Action.¹ Claimants 1 and 3 provided written notice that they would not contest the Preliminary Determinations issued in the Second Covered Action. However, Claimant 2 provided a timely request for reconsideration, arguing that Claimant 2 should receive a higher award allocation in the Second Covered Action as compared to Claimant 1. For the reasons discussed below, the recommendations of the CRS are adopted.

I. First Covered Action

In the First Covered Action, the Commission alleged that from Redacted through Redacted (collectively, “Respondents”) Redacted by entities related to Redacted (“the Company”). Respondents, who were not Redacted

The record demonstrates that Claimant 1 and Claimant 2 voluntarily provided original information to the Commission that led to the successful enforcement of the First Covered Action.² Specifically, Claimant 1, an outsider, expeditiously submitted a detailed tip alerting staff in the Division of Enforcement (“Enforcement”) that the Company and its Redacted representatives Redacted

Claimant 1 also identified the Respondents as being involved in the Redacted Claimant 1’s information prompted the opening of the investigation. Claimant 2, a former employee of the Company, submitted information and supporting documentation that significantly contributed³ to the success of the First Covered Action, including additional and Redacted

¹ Because the First Covered Action and Second Covered Action arose out of the same investigation, and involve overlapping factual and legal issues, and the same claimants, we address the award claims in a single Final Order.

² 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). Because Claimant 3 did not contest the preliminary denial of Claimant 3’s award claim in the First Covered Action, that preliminary denial is deemed to be the Final Order of the Commission pursuant to Exchange Act Rule 21F-10(f), and as such, is not before us.

³ In determining whether information significantly contributed to an enforcement action, the Commission considers whether the information allowed the agency to bring: “(1) [the] successful action in significantly less time or with significantly fewer resources; (2) additional

specific information regarding Respondents’
Redacted

Redacted

Applying the award criteria in Rule 21F-6 of the Securities Exchange Act of 1934 to the specific facts and circumstances here, we find that the proposed award amounts in the First Covered Action are appropriate.⁴ In reaching that determination, we positively assessed the following facts: (1) Claimant 1 quickly provided significant information alerting Enforcement staff of the Redacted violations and prompting the opening of the investigation; (2) while Claimant 1 identified the Redacted violations to Enforcement staff, including the identification of certain relevant individuals, Claimant 2 provided additional information and supporting documentation that bolstered the alleged Redacted violations; (3) both Claimant 1 and Claimant 2 provided additional assistance to the Enforcement staff, including by meeting with them in-person; and (4) the amounts collected are relatively low.

II. Second Covered Action

In the Second Covered Action, the Commission filed a civil injunctive action against the Company and others (collectively, “Defendants”) alleging that from Redacted the Defendants engaged in Redacted

Redacted The complaint alleged, in part, that the Defendants Redacted

Redacted But in reality, the Defendants knew that Redacted

Redacted Redacted

Redacted

successful claims; or (3) successful claims against additional individuals or entities.” *Securities Whistleblower Incentives and Protections*, 76 Fed. Reg. 34300, 34325 (June 13, 2011). In other words, “[t]he individual’s information must have been ‘meaningful’ in that it ‘made a substantial and important contribution’ to the success of the covered action.” *Order Determining Whistleblower Award Claims*, Exch. Act Rel. No. 85412, 2018 SEC LEXIS 615, at *16 (Mar. 26, 2019); *Order Determining Whistleblower Award Claims*, Exch. Act Rel. No. 82897, 2018 SEC LEXIS 750, at *16 (Mar. 19, 2018).

⁴ 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.

The record demonstrates that Claimant 1, Claimant 2, and Claimant 3 voluntarily provided original information to the Commission that led to the successful enforcement of the Second Covered Action. As noted above, Claimant 1 submitted a detailed tip alleging that the Company was ^{Redacted} prompting the opening of the investigation. Claimant 2 provided new, important information concerning the Company's ^{Redacted} and also provided information and supporting documentation concerning the Company's alleged ^{Redacted} which significantly contributed to the success of the Second Covered Action. Two years after the opening of the investigation, Claimant 3, also a former Company employee, submitted a tip alleging violations by the Company. While most of the information Claimant 3 submitted was duplicative of information Enforcement staff had already learned or obtained during the course of the investigation, Claimant 3 did provide new information, namely the identification of an important witness, who in turn provided helpful supporting evidence, which significantly contributed to the success of the Second Covered Action.

The CRS recommended that Claimant 1 and Claimant 2 should receive an equal award amount in the Second Covered Action – ^{Redacted} percent (^{***} %) each, and that Claimant 3, whose new information was much more limited than that provided by Claimant 1 and Claimant 2, should receive an award of ^{***} percent (^{**} %). Applying the award criteria in Rule 21F-6 of the Securities Exchange Act of 1934 to the specific facts and circumstances here, we find that the proposed award amounts in the Second Covered Action are appropriate.

While Claimant 2 submitted a timely request for reconsideration arguing that Claimant 2 should receive a higher award allocation as compared to Claimant 1, we find the CRS's recommended award allocation to be appropriate. Claimant 2 argues that Claimant 2 provided a greater degree of assistance to the Enforcement staff relative to the assistance provided by Claimant 1. While Claimant 2 may have provided more assistance, including meeting with staff and providing numerous documents, it was Claimant 1 who expeditiously submitted the tip alerting Enforcement staff to the ongoing securities violations. Additionally, Claimant 2 submitted a tip in ^{Redacted} and began working with Enforcement staff on the matter in ^{***}, approximately eight to nine months after the Enforcement staff received information from Claimant 1.⁵ Not only did Claimant 1 submit the tip that caused the opening of the investigation, but Claimant 1 also provided assistance to Enforcement staff by meeting with them in-person once and providing certain, *albeit* more limited, supporting documentation. Both Claimant 1 and

⁵ While Claimant 2 had submitted a tip in ^{Redacted} the Enforcement staff responsible for the First and Second Covered Actions did not review that tip because of concerns that the tip may have contained information protected by the attorney-client privilege. Claimant 2 submitted a revised tip in ^{Redacted} that did not contain privileged information and on which Claimant 2's award claim is based.

Claimant 2 provided new information that formed the basis for certain of the charges in the Covered Action. We believe that Claimant 1's information, which was submitted earlier in time and caused the opening of the investigation, was more significant vis-à-vis Claimant 2's information. As such, we find that the level of contribution provided by Claimant 1 and Claimant 2 to the success of the Second Covered Action was similar and that they should receive an equal award allocation.

Finally, we find the CRS's recommendation that Claimant 3 receive a significantly lower award amount than Claimant 1 and Claimant 2 also is appropriate in light of the limited nature of the information provided by Claimant 3.

III. Conclusion

Accordingly, it is hereby ORDERED that: (1) Claimant 1 and Claimant 2 shall each receive an award of ^{Redacted} percent (%) of the monetary sanctions collected, or to be collected, in the First Covered Action; (2) Claimant 1 and Claimant 2 shall each receive an award of ^{Redacted} percent (%) of the monetary sanctions collected, or to be collected, in the Second Covered Action; and (3) Claimant 3 shall receive an award of percent (%) of the monetary sanctions collected, or to be collected, in the Second Covered Action.

By the Commission.

Eduardo A. Aleman
Deputy Secretary