

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 90922 / January 14, 2021

WHISTLEBLOWER AWARD PROCEEDING
File No. 2021-24

In the Matter of the Claims for an Award

in connection with

Redacted

Notice of Covered Action ^{Redacted}

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued Preliminary Determinations in connection with the above-referenced Covered Action (the “Covered Action”) recommending that ^{Redacted} (“Claimant 1”) receive a whistleblower award of nearly \$600,000, equal to ^{Redacted} percent (^{***}) of the monetary sanctions collected, and that the whistleblower award application submitted by ^{Redacted} (“Claimant 2”) be denied. Claimant 1 provided written notice of Claimant 1’s decision not to contest the Preliminary Determination and Claimant 2 filed a timely response contesting the Preliminary Determination. For the reasons discussed below, the CRS’s recommendation is adopted with respect to both Claimant 1 and Claimant 2.

I. Background

A. The Covered Action

On ^{Redacted}, the Commission instituted administrative and cease-and-desist proceedings alleging that ^{Redacted} or “the Company”) had made ^{Redacted}

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The Respondents were ordered by the Commission to pay civil penalties totaling
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B. The Preliminary Determinations

The CRS issued Preliminary Determinations¹ recommending that Claimant 1 receive a whistleblower award in the amount of Redacted percent () of the monetary sanctions collected and that Claimant 2's claim be denied. The Preliminary Determination explained that Claimant 2 is ineligible for an award because Claimant 2 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 because any information Claimant 2 provided did not: (1) cause 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 contribute to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act. Enforcement staff responsible for the Covered Action confirmed that they did not receive any information from Claimant 2, nor did they have any communications with Claimant 2, before or during the investigation.

C. Claimants' Responses to the Preliminary Determinations

Claimant 1 provided written notice of Claimant 1's decision not to contest the Preliminary Determination.

After receiving a copy of the record, Claimant 2 submitted a timely written response contesting the Preliminary Determination.² Specifically, Claimant 2 argues in response to the Preliminary Determination that Enforcement staff responsible for the Covered Action do not have to directly receive information from a claimant for that claimant's information to have played a role in that particular enforcement action. Claimant 2 argues that Claimant 2's tip was in the "pool of operative facts" that the Commission would use to commence future investigations and help bring successful enforcement actions addressing the particular forms of "novel conduct" detailed in Claimant 2's tip.

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

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

III. Analysis

A. Claimant 1

The record demonstrates that Claimant 1 voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action.³

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Claimant 1

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provided new, detailed, and highly valuable information and substantial assistance during the course of an open investigation that significantly contributed to the success of the Covered Action. Claimant 1 met with staff multiple times, provided critical investigative leads, and there is a close nexus between Claimant 1's information and certain of the Commission's charges in the Covered Action.

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B. Claimant 2

To qualify for an award under Section 21F of the Securities Exchange Act of 1934 ("Exchange Act"), a whistleblower must voluntarily provide the Commission with original information that leads to the successful enforcement of a covered action.⁶ As relevant here, information will be deemed to have led to a successful enforcement action if it was "sufficiently specific, credible, and timely to cause the staff to commence an examination, open an investigation . . . or to inquire concerning different conduct as part of a current . . . investigation,

³ 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).

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

and the Commission brought a successful judicial or administrative action based in whole or in part on conduct that was the subject of [this] information.”⁷ Alternatively, information will be deemed to have led to a successful enforcement action where the information was “about conduct that was already under examination or investigation by the Commission” and the “submission significantly contributed to the success of the action.”⁸ 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.⁹

Claimant 2’s information did not cause the Covered Action investigation to be opened under Exchange Act Rule 21F-4(c)(1). Rather, the record reflects that the Covered Action investigation was opened in ^{Redacted} based on the Company’s ^{Redacted}

Claimant 2’s information also did not significantly contribute to the success of the Covered Action under Exchange Act Rule 21F-4(c)(2). Claimant 2 bases the award claim on a tip Claimant 2 submitted to the Commission in ^{Redacted} alleging that ^{Redacted} (“Unrelated Company”) and its executives violated the securities laws by ^{Redacted} concerning the Unrelated Company’s operations.

Claimant 2’s tip was assigned to Enforcement staff in the ^{Redacted} (“Regional Office Staff”) in connection with their investigation of the Unrelated Company (“Unrelated Investigation”). The Regional Office Staff was not able to substantiate the allegations, and closed the Unrelated Investigation without recommending an enforcement action. A member of the Regional Office Staff affirmed in a declaration, which we credit, that they did not provide Claimant 2’s information to the Enforcement staff responsible for the Covered Action (who were located in a different Commission office) or have any communications with them concerning Claimant 2’s information.

There is no nexus between Claimant 2’s information and the Covered Action. Claimant 2’s tip contains no allegations about the Respondents charged in the Covered Action, and the record is clear that the Enforcement staff responsible for the Covered Action did not receive Claimant 2’s information directly or indirectly through other Enforcement staff. That Claimant 2 made allegations about ^{Redacted} with respect to the Unrelated Company does

⁷ Exchange Act Rule 21F-4(c)(1).

⁸ Exchange Act Rule 21F-4(c)(2).

⁹ See *Order Determining Whistleblower Award*, Whistleblower File No. 2019-4, at 9, 2019 SEC LEXIS 615 at *16 (Mar. 26, 2019); see also *Securities Whistleblower Incentives & Protections*, 76 Fed. Reg. 34300, 34325 (June 13, 2011) (in determining whether information significantly contributed to an enforcement action, the Commission will consider whether the information allowed the agency to bring the action in significantly less time or with significantly fewer resources, additional successful claims, or successful claims against additional individuals or entities).

not mean that Claimant 2 is then eligible for every future enforcement action involving similar securities law violations.¹⁰

Accordingly, Claimant 2's information did not lead to the success of the Covered Action.

IV. Conclusion

Accordingly, it is ORDERED that Claimant 1 shall receive an award of ^{Redacted} percent (...) of the monetary sanctions collected or to be collected in the Covered Action and that Claimant 2's whistleblower award application be, and hereby is, denied.

By the Commission.

Vanessa A. Countryman
Secretary

¹⁰ Claimant 2 also appears to argue that Claimant 2 is entitled to an award under a “common nucleus of operative facts” theory. Under Exchange Act Rule 21F-4(d), for purposes of making an award under Rule 21F-10 the Commission may treat as a Commission action two or more administrative or judicial proceedings brought by the Commission if these proceedings arise out of the same nucleus of operative facts. However, this rule is not applicable here as Claimant 2 is not eligible for an award in connection with the Unrelated Investigation, which did not result in an enforcement action. Furthermore, the record reflects that the Unrelated Investigation and Covered Action investigation were conducted separately and involve unrelated parties, and as such, do not arise out of the same nucleus of operative facts.