

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 96229 / November 4, 2022

WHISTLEBLOWER AWARD PROCEEDING

File No. 2023-11

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In the Matter of the Claim for an Award

in connection with

Redacted

Notice of Covered Action Redacted

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM**

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending the denial of the whistleblower award claim submitted by Redacted (“Claimant”) in connection with the above-referenced covered action (the “Covered Action”). Claimant filed a timely response contesting the preliminary denial. For the reasons discussed below, Claimant’s award claim is denied.

**I. Background**

**A. The Covered Action**

On Redacted the Commission filed a complaint against Redacted (the “Defendant”), Redacted (the “Company”), alleging that Defendant Redacted

Redacted Among other things, the complaint alleged that Redacted

Redacted The complaint charged that Redacted

Redacted On Redacted the court entered final judgment, permanently enjoining Defendant from future violations of the securities laws and ordering Defendant to pay a civil monetary penalty of Redacted

On <sup>Redacted</sup> the Office of the Whistleblower (“OWB”) posted the Notice for the Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days. Claimant filed a timely whistleblower award claim.

## **B. The Preliminary Determination**

On <sup>Redacted</sup> the CRS issued a Preliminary Determination recommending that Claimant’s claim be denied because Claimant did not provide information that led to the successful enforcement of the Covered Action within the meaning of Section 21F(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rules 21F-3(a)(3) and 21F-4(c) thereunder. The CRS concluded that Claimant’s information did not either (1) cause the Commission to (a) commence an examination, open or reopen an investigation, or inquire into different conduct as part of a current Commission examination or investigation, and (b) thereafter bring an action based, in whole or in part, on conduct that was the subject of claimant’s information, pursuant to 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) of the Exchange Act. The CRS determined that investigative staff responsible for the Covered Action never received any information from, or had any communication with, Claimant.

The CRS also concluded that Claimant failed to submit Claimant’s claim for award within 90 days of the date of the above-referenced Notice of Covered Action, as required under Rule 21F-10(b) of the Exchange Act. Claimant determined that Claimant’s WB-APP was signed and dated approximately seven months after the deadline to file an application for an award.

## **C. Claimant’s Response to the Preliminary Determination**

Claimant submitted a response (the “Response”) which OWB viewed as contesting the Preliminary Determination.<sup>1</sup> Claimant requested “a definitive preliminary determination and a schedule of the next steps in resolving the Whistleblower Award Application.” Among other things, Claimant argued that he/she contacted the Commission in <sup>Redacted</sup> and was subsequently “attacked and harassed” by <sup>Redacted</sup> (“Other Entity”). Claimant alleged that the Commission did not “adequately protect [Claimant] from retaliation and harassment” and “demands to be compensated for [Claimant’s] cooperation in the . . . SEC investigation into [Other Entity].” Claimant also claimed that Claimant “provided material information regarding [Claimant’s] claims against [the Company] and [Defendant] to the [Company] Board, and Federal Court, <sup>Redacted</sup>

<sup>Redacted</sup> in advance of the SEC decision to fine [Defendant] and [Company]. [Claimant] also provided information directly to the SEC at help@sec.gov and [email address for a former Commissioner] and completed the TCR Form once [Claimant] was notified it was required.”<sup>2</sup>

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<sup>1</sup> See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

<sup>2</sup> Upon receipt of the preliminary denial, Claimant requested to review the materials that formed the basis of the Preliminary Determination pursuant to Exchange Act Rule 21F-10(e)(1)(i). However, Claimant declined to execute OWB’s standard confidentiality agreement, as discussed in Exchange Act Rule 21F-12(b), without “a financial

## II. Analysis

To qualify for an award under Section 21F of the Exchange Act, a claimant must, among other things, submit a claim for award within 90 days of the posting of a Notice of Covered Action.<sup>3</sup> The deadline ensures fairness to potential claimants by giving all an equal opportunity to have their competing claims evaluated at the same time. The deadline also brings finality to the claim process so that the Commission can make timely awards to meritorious whistleblowers.<sup>4</sup>

A claimant must also voluntarily provide the Commission with original information that leads to the successful enforcement of a covered action.<sup>5</sup> As relevant here, 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;<sup>6</sup> or (ii) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup>

Claimant does not qualify for a whistleblower award on two independent grounds. First, Claimant did not submit Claimant’s whistleblower application within the required ninety-day

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settlement in the amount of 2% of the [Company’s] market capitalization Redacted  
Redacted and a cash settlement in an amount more than  
500,000,000.00 USD to retain counsel, security, and relocate to a safe location of [Claimant’s] choosing.”

<sup>3</sup> See Exchange Act Rule 21F-10(b), 17 C.F.R. § 240.21F-10(b).

<sup>4</sup> See *Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934*, Release No. 64545, 76 Fed. Reg. 34300, 34300; Order Determining Whistleblower Award Claim, Release No. 88464 at 3 (Mar. 24, 2020).

<sup>5</sup> Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

<sup>6</sup> See Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

<sup>7</sup> See Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

<sup>8</sup> 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 (same).

<sup>9</sup> Exchange Act Rel. No. 85412 at 8-9.

deadline. The requirement that claimants file whistleblower award claims within ninety days of the posting of a Notice of Covered Action (“NoCA”), set forth in Exchange Act Rule 21F-10, serves important programmatic functions. Here, Claimant’s application was approximately seven months late. This ground alone renders Claimant ineligible for an award. Further, Claimant did not contest the CRS’s recommended denial on this ground and accordingly forfeits Claimant’s opportunity to contest on this ground.<sup>10</sup>

Claimant also does not qualify for an award on the ground that Claimant’s information did not lead to the successful enforcement of the Covered Action. Enforcement staff confirms that the investigation that led to the Covered Action (the “Investigation”) was opened based upon the staff’s own investigative steps and not based on any information from Claimant. The staff also confirms that the staff did not receive any information provided by Claimant prior to opening the Investigation. Accordingly, Claimant’s information did not cause the staff to open the Investigation.

In addition, the staff states that they did not receive any information from Claimant, nor do they recall communicating or having any contact with Claimant, either before or during the Investigation. Enforcement staff also state that Claimant’s information did not contribute to the Investigation or the Covered Action in any way. A supplemental declaration provided by OWB staff also confirms that Claimant’s TCR submissions were all provided to the Commission after the Commission filed the Covered Action and all Claimant’s TCRs were designated as “no further action.” Accordingly, Claimant’s information did not cause the staff to inquire into different conduct nor did it significantly contribute to the success of the Covered Action.

For these reasons, Claimant is not entitled to an award.<sup>11</sup>

### **III. Conclusion**

Accordingly, it is hereby ORDERED that the whistleblower award application of Claimant in connection with the Covered Action be, and it hereby is, denied.

By the Commission.

Vanessa A. Countryman  
Secretary

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<sup>10</sup> *Cf.* Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f) (“Your failure to submit a timely response contesting a Preliminary Determination will constitute a failure to exhaust administrative remedies, and you will be prohibited from pursuing an appeal pursuant to § 240.21F-13 of this chapter.”).

<sup>11</sup> Claimant’s Response argues that Claimant submitted material to the Commission by email beginning in 2017, before the Covered Action was filed. However, the record demonstrates that Enforcement staff opened the Investigation based upon its own investigative steps, not based upon information from Claimant.