

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 91902 / May 17, 2021

WHISTLEBLOWER AWARD PROCEEDING
File No. 2021-48

In the Matter of the Claims for an Award

in connection with

Redacted

Redacted

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued Preliminary Determinations recommending that Redacted (“Claimant 1”) and Redacted (“Claimant 2”) jointly receive a whistleblower award of ^{***} percent (^{***} %) of the amounts collected in the above-referenced Covered Action (“Covered Action”). The CRS also preliminarily recommended that the award claim of Redacted (“Claimant 3”) should be denied. Claimant 1 and Claimant 3 filed timely responses contesting the Preliminary Determinations, and Claimant 2 provided written notice of Claimant 2’s decision not to contest the Preliminary Determinations.¹ After

¹ The CRS also preliminarily determined to recommend denying an award to a fourth claimant, who has not filed a written response. Accordingly, the fourth claimant has failed to exhaust administrative remedies and the preliminary denial of that award claim has become the Final Order of the Commission pursuant to Exchange Act Rule 21F-10(f), 17 C.F.R. § 240.21F-

reviewing the response filed by Claimant 1, the CRS recommended that the joint award for Claimants 1 and 2 be increased from *** percent (*** %) to Redacted percent (*** %), which would result in a joint award of almost \$27 million. For the reasons discussed below, the CRS’s recommendations are adopted with respect to Claimant 1, Claimant 2, and Claimant 3.

I. Background

A. The Covered Action

On Redacted, the Commission instituted settled administrative and cease-and-desist proceedings, Redacted

Redacted The Commission found that, between Redacted Redacted (“the Company”) made Redacted

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On Redacted the Office of the Whistleblower posted the relevant Notice of Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days.² Claimants 1, 2 and 3 each separately filed a timely whistleblower award claim.

10(f).

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

B. The Preliminary Determinations

The CRS issued Preliminary Determinations³ recommending that Claimant 1 and Claimant 2 jointly receive a whistleblower award equal to *** percent (*** %) of the monetary sanctions collected in the Covered Action and that Claimant 3's award be denied because Claimant 3 did not provide original information that "led to" the success of the Covered Action as required under Exchange Act Rule 21F-4(c).

C. Claimants' Responses to the Preliminary Determination

Claimant 1 submitted a timely written response contesting the Preliminary Determination.⁴ Specifically, Claimant 1 argues in response to the Preliminary Determination that (1) Claimant 1 should not be considered a joint whistleblower with Claimant 2, and that (2) Claimant 1 should receive a higher award.⁵

Claimant 3 submitted a timely written response contesting the Preliminary Determination.⁶ Specifically, Claimant 3 submitted a one-page email arguing that there is a "history of the US Government in treating ^{Redacted} whistleblowers differently than others, including the specific performance of the Securities and Exchange Commission." Claimant 3 also references ^{Redacted}

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

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

⁵ While Claimant 2 expressed Claimant 2's intention not to contest the Preliminary Determination, because we deem Claimant 1 and Claimant 2 to be joint whistleblowers, Claimant 1's decision to contest inures to them both.

⁶ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

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III. Analysis

A. Claimant 1 and Claimant 2

The record demonstrates that Claimant 1 and Claimant 2 jointly and voluntarily provided original information to the Commission that significantly contributed to the success of the Covered Action.⁷ The record reflects that in Redacted, staff of the Division of Enforcement (“Enforcement”) opened an investigation, based on Redacted, to determine if the Company had Redacted

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⁷ 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). 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 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).

⁸ Under the whistleblower rules, a whistleblower’s “submission of information to the Commission will be considered voluntary” if the whistleblower “voluntarily provided the same information to one of the other [enumerated] authorities . . . prior to receiving a request, inquiry, or demand from the Commission.” Exchange Act Rule 21F-4(a)(2).

Redacted

Redacted On Redacted, Claimant 1 and Claimant 2, who were represented by the same counsel, met in-person with Enforcement staff over two days. Although most of the information provided by Claimant 1 and Claimant 2 was already known to Enforcement staff from other sources, they identified, in writing, Redacted which helped to meaningfully advance the staff's investigation and was the basis for certain allegations in the Commission's Order against the Company. The record also reflects that Claimants 1 and/or 2 met with Enforcement staff on Redacted

Applying the award criteria in Rule 21F-6 of the Exchange Act to the specific facts and circumstances here, we find the proposed joint award of Redacted percent (*** %), which would result in an almost \$27 million joint award, to be appropriate. While Claimants 1 and 2 provided new but limited information years after the investigation had opened, Claimants 1 and 2 also provided additional assistance and cooperation to the Enforcement staff, by, for example, meeting with them in-person on three separate days. Furthermore, Claimants 1 and 2 internally reported their concerns, and their information and assistance helped the Commission bring an important enforcement action that resulted in the return of millions of dollars to harmed investors.

Claimant 1 argues in Claimant 1's request for reconsideration that (i) Claimant 1 should not be viewed as a joint whistleblower with Claimant 2, and that the Commission must determine Claimant 1's individual award percentage. According to Claimant 1, Claimant 1 had an agreement with Claimant 2 (as well as with a third individual who did not submit an award application) that Claimant 1, Redacted would be responsible for filing the whistleblower application and determining the distribution of any award to the group. Claimant 1 claims Claimant 2 violated this agreement by hiring Claimant 2's own attorney and filing an award application. Notably, Claimant 1 does not point to any written agreement; rather, this was a purported understanding that Claimant 1, Claimant 2, and the third individual had reached that was never reduced to writing.

Whatever Claimant 1 and Claimant 2’s private understanding may have been, and regardless of their apparent subsequent falling out, the record is clear that they presented themselves to the Commission as joint whistleblowers when they provided their information to the Commission in Redacted . Both Claimant 1 and Claimant 2 attended the Redacted meeting together, and were represented by the same counsel at the meeting. Furthermore, their then-counsel submitted a letter to the Enforcement staff dated Redacted , confirming that Claimant 1 and Claimant 2 (as well as the third individual) were part of a “team” and that the “ Redacted ” developed the original information and that the “ Redacted ” provided the information to the Commission. At no point during the investigation did Claimant 1, Claimant 2 or their then-counsel delineate what information was being provided on behalf of Claimant 1 versus what was being provided on behalf of Claimant 2. In short, Claimant 1 and Claimant 2 represented themselves to the Commission staff as a “team” who had jointly developed and were jointly providing the information to the Commission staff.

B. Claimant 3

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.⁹ 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, 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;”¹⁰ or, alternatively, the information was “about conduct that was already under examination or investigation by the Commission”

⁹ See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

¹⁰ Rule 21F-4(c)(1).

and the “submission significantly contributed to the success of the action.”¹¹

Claimant 3 does not satisfy Rule 21F-4(c)(1), as Enforcement staff opened the Covered Action investigation based on a source other than Claimant 3. Nor does Claimant 3 satisfy Rule 21F-4(c)(2) because Enforcement staff responsible for the Covered Action received no information from Claimant 3, nor had any communications with Claimant 3, before or during the course of the Covered Action investigation.

In Claimant 3’s response, Claimant 3 seeks to incorporate by reference various constitutional arguments Claimant 3 previously raised in connection with an unrelated claim for award that the Commission denied on the same grounds.¹² Claimant 3 does not explain how Claimant 3 provided information that was used by Enforcement staff in connection with the Covered Action investigation. Claimant 3 also points to no information that Claimant 3 provided to the Commission that even relates to the Covered Action. As such, Claimant 3’s award claim in the Covered Action is denied because Claimant 3 did not provide original information that led to the success of the Covered Action.

¹¹ Rule 21F-4(c)(2).

¹² Claimant 3 alleged that the denial of this earlier claim for an award violated the Equal Protection Clause of the Fourteenth Amendment and the First Amendment to the U.S. Constitution. Claimant 3 appealed the Commission’s final determination ^{Redacted}
^{Redacted} The Court granted the Commission’s motion for summary ^{Redacted}
affirmance ^{Redacted}
^{Redacted}

^{Redacted} We therefore reject Claimant 3’s apparent attempt to use this whistleblower claim proceeding to re-litigate constitutional questions that were fully litigated and affirmed on appeal in the earlier proceeding.

IV. Conclusion

Accordingly, it is ORDERED that Claimant 1 and Claimant 2 receive a joint award of ^{Redacted} percent (^{***} %) of the monetary sanctions collected or to be collected in the Covered Action and that Claimant 3's award application is denied.¹³

By the Commission.

Vanessa A. Countryman
Secretary

¹³ Our determination to treat Claimant 1 and Claimant 2 as joint whistleblowers has not impacted the net total award percentage to Claimant 1 and Claimant 2. Unless Claimant 1 and Claimant 2, within ten (1) calendar days of the issuance of this Order, make a joint request, in writing, for a different allocation of the award between the two of them, the Office of the Whistleblower is directed to pay each of them individually 50% of their joint award.