UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 93569 / November 12, 2021

WHISTLEBLOWER AWARD PROCEEDING
File No. 2022-13

In the Matter of the Claim for an Award

in connection with

Redacted

Notice of Covered Action Redacted

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

In Redacted, Claimant, who was then the Redacted of Redacted ("Company"), sent an email to the Commission alleging that the Company had Redacted. In Redacted, Commission staff from the Division of Enforcement ("Enforcement"), along with an official from another agency, telephonically interviewed Claimant, during which call, Claimant made similar allegations to those in Claimant's Redacted email.[1]

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[1] Claimant further alleged that the Company's Redacted According to Claimant, Redacted

On Redacted, the Commission staff opened an investigation of the Company that culminated in the Covered Action ("Investigation"). On Redacted, the Investigation staff sent a subpoena for documents and materials to the Company, as well as a preservation letter for additional evidence. The subpoena and the preservation letter required the production of documents concerning Redacted going back to Redacted, and encompassed all products and Redacted of the Company. Pursuant to the subpoena and preservation letter, the Company began preserving, collecting, and producing responsive materials in the days, weeks, and months following on a rolling basis.

On Redacted, Enforcement staff, along with an official from another agency, interviewed Claimant in person. According to the Enforcement staff, during the meeting, Claimant reiterated the allegations made in his/her Redacted email to the Commission, but did not provide the staff with any new and useful information about the Company's Redacted, beyond what Claimant had already provided in the Redacted email and Redacted telephonic interview.

On Redacted, the Commission filed an enforcement action against the Company and charged the Company with violations of Redacted

Specifically, the Commission charged that Redacted

. The Company was also charged with Redacted

The Commission ordered the Company to pay disgorgement of Redacted, prejudgment interest of Redacted and a civil penalty of Redacted.

On Redacted, 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

The CRS issued a Preliminary Determination[2] recommending that Claimant's claim be denied because the information provided by Claimant before July 21, 2010, the date of the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), did not constitute original information within the meaning of Section 21F(b)(l) of the Exchange Act and Rules 21F-3(a)(2) and 21F-4(b)(1)(iv) thereunder ("original information" must, among other requirements, have been "[p]rovided to the Commission for the first time after July 21, 2010 (the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act)") and the information provided to the Commission after July 21, 2010 did not lead to the success of the Covered Action under Rule 21F-4(c)(2) of the Exchange Act. With

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

regard to the information Claimant provided after July 21, 2010, the CRS found that, while Claimant met with the Enforcement staff in Redacted and submitted additional written communications to the staff, Claimant did not provide any new information that was used by the staff during the Investigation or in the Covered Action. The record supporting the Preliminary Determination included the declaration (the "First Declaration") of one of the attorneys who was assigned to the Investigation and the resulting Covered Action.[3] The First Declaration stated under penalty of perjury that, during the in-person interview in Redacted, Claimant did not provide helpful new information but, rather, repeated his/her earlier allegations and did not provide the staff with any new and useful information about the Company's Redacted activities beyond what Claimant had already provided in his/her Redacted email and the Redacted telephonic interview. The First Declaration noted that Claimant did make other allegations and provide other information at and after the Redacted meeting, but none of these allegations nor any of the additional information became a part of the case ultimately brought by the Commission against the Company, which charged that the Company had violated Redacted

C. Claimant's Response to the Preliminary Determination

On Redacted, Claimant submitted a timely written response contesting the Preliminary Determination.[4] Specifically, Claimant argues in response to the Preliminary Determination that he/she provided the Commission with original information after July 21, 2010 that caused the Commission to inquire into different conduct as part of the open Investigation and that this information significantly contributed to the success of the Covered Action. According to Claimant, prior to July 21, 2010, Claimant's information was "limited to detailed information, that Claimant subsequently added to and enhanced [after July 21, 2010], regarding [the Company]'s Redacted

Claimant states that the importance of Claimant's post-July 21, 2010 information is shown by the scope of the information requested in an SEC subpoena issued to the Company after that date.[5] Claimant points in particular to the Redacted in-person meeting Claimant had with the staff and an official from another agency as a key moment in causing the Commission to inquire into different conduct by the Company, namely, Redacted

Claimant also notes other information he/she submitted after the Redacted meeting that, Claimant asserts, "made a substantial and important contribution to the successful resolution of the Covered Action … and strengthened

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[3] The whistleblower rules contemplate that the record upon which an award determination is made shall consist of a sworn declaration provided by the relevant Commission staff, in addition to the publicly available materials related to the Covered Action, the claimant's tip and the claimant's award application. *See* Exchange Act Rule 21F-12(a).

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

[5] Claimant asserts that "[i]t is clear that in Redacted the SEC had no evidence, plans, or intent to investigate [the Company]'s Redacted and their role in the Redacted

the Commission's case by meaningfully increasing Enforcement staff's leverage during the settlement negotiations."[6]

In addition to the purported assistance Claimant provided to the Commission after July 21, 2010, which Claimant asserts supports granting him/her an award, Claimant also requests that the Commission consider the personal harm he/she suffered as a result of the purported retaliation Claimant faced from his/her supervisor at the Company and be cognizant of the fact that "Claimant very much needs the award from this successful settlement to begin to put [Claimant]'s life back to some normalcy after more than *** years since [the Company's ***] exercised *** vengeance on the Claimant because [Claimant] told the truth Redacted that worked with [the supervisor] to cover up the crimes."[7]

II. Analysis

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.[8] As relevant here, to be considered original information the submission must be provided to the Commission for the first time after July 21, 2010.[9] Additionally, original information will be deemed to lead to a successful enforcement 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;[10] or (ii) the conduct was already under examination or investigation, and the original information "significantly contributed to the success of the action."[11]

Claimant does not dispute that the information Claimant provided to the staff in his/her Redacted email and the Redacted telephonic meeting with the staff and an official from another agency pre-dated the enactment of the Dodd-Frank Act and therefore does not qualify as original information under Exchange Act Rule 21F-4(b)(iv), and thus cannot form the basis of a whistleblower award.[12]

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6 For example, Claimant states that a later tip he/she submitted alerted the investigative staff to the Company's Redacted and that this tip "was the basis for [the Company's Redacted initiation to investigate the matter Redacted thereby saving the need for the Commission to investigate . . . [and] provided the Commission with the leverage, whether used explicitly or implied, to bring the action and settlement to efficient conclusion with fewer resources."

7 *See supra* note 1. According to Claimant, the retaliation forced Claimant Redacted

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

9 *See* Exchange Act Rule 21F-4(b)(1)(iv); 17 C.F.R. §240.21F-4(b)(1)(iv).

10 *See* Exchange Act Rule 21F-4(c)(1); 17 C.F.R. §240.21F-4(c)(1).

11 *See* Exchange Act Rule 21F-4(c)(2), 17 C.F.R § 240.21F-4(c)(2).

12 *See also Stryker v. SEC*, 780 F.3d 163 (2d Cir. 2015).

With regard to the information Claimant provided after the enactment of the Dodd-Frank Act, we find that Claimant's information did not cause the Commission to inquire concerning different conduct as part of its existing investigation nor did it significantly contribute to the success of the Covered Action.[13] As noted, the First Declaration stated that Claimant did not provide the staff with any new and useful information about the Company's Redacted activities beyond what Claimant had already provided in his/her Redacted email and the Redacted telephonic interview and that none of the other allegations and information he/she provided at and after the Redacted meeting became a part of the Redacted case ultimately brought by the Commission against the Company.[14]

In response to Claimant's letter contesting the Preliminary Determination, the attorney who wrote the First Declaration wrote two supplemental declarations (the "Second Declaration" and the "Third Declaration"). The Second and Third Declarations reconfirmed under penalty of perjury that Claimant did not provide the staff with any new and useful information about potential Redacted after July 21, 2010 beyond what he/she had already provided in his/her Redacted email and Redacted telephonic interview. As noted, pursuant to the subpoena and preservation letter the staff sent the Company in Redacted, the Company provided responsive materials to the staff over the next several weeks and months. The Second and Third Declarations affirmed that the evidence produced by the Company was the primary source of information which led to the success of the Covered Action, including the scheme involving Redacted and Redacted involving Redacted[15]

Claimant presents no reason to believe that any information he/she submitted after July 21, 2010 was used by the staff responsible for the Covered Action. We therefore credit the three staff declarations and find that Claimant's information did not significantly contribute to the success of the Covered Action.

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[13] Moreover, since the Investigation was opened on Redacted, Claimant's post-Dodd-Frank Act information did not cause the opening of the Investigation.

[14] *See supra* note 6.

[15] The Second Declaration stated that, while Claimant made allegations after Claimant's Redacted in-person interview about the Company's efforts to Redacted the staff was already aware of this information from information provided by the Company pursuant to the subpoena and preservation letter. Further, the Third Declaration stated that the staff did not send any additional subpoenas or requests for documents or other information to the Company as a result of information it received from Claimant during or after the Redacted in-person interview.

IV. Conclusion

Accordingly, it is hereby ORDERED that the whistleblower award application of Claimant be, and it hereby is, denied.

By the Commission.

J. Lynn Taylor
Assistant Secretary