

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 96230 / November 4, 2022

WHISTLEBLOWER AWARD PROCEEDING

File No. 2023-12

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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 an emergency action against Redacted (the “Defendants”). The Commission’s complaint alleged, among other things, that the Defendants Redacted

The Commission’s complaint also alleged that Defendants Redacted

Redacted Redacted The Commission also charged Redacted (“Individual 1”) and Redacted (“Individual 2”) Redacted On Redacted the court entered judgment against the Defendants, ordering them to pay over Redacted in disgorgement, as well as permanently enjoining them from future violations of the federal securities laws. That same day the court also entered judgment against Individual 2, ordering him/her to pay Redacted in disgorgement and prejudgment interest. On

<sup>Redacted</sup> the court ordered Individual 1 to pay <sup>Redacted</sup> in disgorgement, prejudgment interest, and a civil penalty.

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 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 preliminarily determined that Claimant first provided information to the Commission approximately one month after the Commission filed the Covered Action. In addition, the CRS preliminarily determined that the information provided by Claimant was either already known to the staff assigned to the investigation that led to the Covered Action (the “Investigation”) or was not relevant to the Covered Action. The CRS also noted that because Claimant did not qualify for an award in connection with the Covered Action, Claimant did not qualify for any related action award.

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

Claimant submitted a timely written response (the “Response”) contesting the Preliminary Determination.<sup>1</sup> Claimant did not provide any new information or facts to the Commission as part of Claimant’s Response. Instead, Claimant principally argues that the Covered Action was “deeply intertwined” with actions brought by <sup>Redacted</sup> (the “Other Agency”). Claimant stated that Other Agency staff and Commission staff spoke with Claimant on at least one occasion, and that the timing of developments in the Investigation affected the Other Agency’s investigation, and vice-versa. Claimant contends that “[g]iven the overlapping investigations, actions, and judgments, the SEC and [Other Agency] actions cannot be viewed in isolation, and [Claimant’s] contributions to one cannot be properly judged without consideration of [Claimant’s] contributions to the other.” Claimant asserts that Other Agency staff should have been consulted “in assessing the significance of [Claimant’s] contributions to the enforcement actions.”

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

## II. Analysis

To qualify for an award under Section 21F of the Exchange Act, a whistleblower must voluntarily provide the Commission with original information that leads to the successful enforcement of a covered action.<sup>2</sup> Additionally, and as relevant here, 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;<sup>3</sup> or (ii) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”<sup>4</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>5</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>6</sup> For the reasons discussed below, Claimant’s information does not merit a whistleblower award in the Covered Action.

As an initial matter, Claimant does not contend that Claimant’s information caused the staff to open the Investigation. Claimant’s TCR was submitted to the Commission approximately ten months after the staff opened the Investigation. Accordingly, Claimant’s information did not cause the staff to open the Investigation.

The record also does not show that Claimant’s information caused the staff to inquire into different conduct or significantly contributed to the ongoing Investigation. The staff declaration confirms that information in Claimant’s TCR was already known to the staff, and Claimant’s later conversations with the staff regarding Claimant’s TCR, where Claimant provided additional documents, also did not yield any information not already known to the staff through its own investigation. Claimant also reported on the substance of a meeting Claimant had with an individual connected to the Defendants; however, Claimant’s information about that meeting did not advance the Investigation or contribute to the success of the Covered Action as the staff was either already aware of the information or it was not relevant to the Investigation.

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<sup>2</sup> Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

<sup>3</sup> *See* Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

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

<sup>5</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>6</sup> Exchange Act Rel. No. 85412 at 8-9.

Claimant's argument that Other Agency staff should be contacted because the Covered Action and the Other Agency actions are "deeply intertwined" is misplaced. As stated above, the initial question we examine is whether Claimant provided original information to the Commission that led to a successful Commission enforcement action.<sup>7</sup> Commission staff are best-placed to determine Claimant's contributions to the Investigation and the Covered Action, and Claimant offers no plausible basis for why we should think otherwise. Based on the record, including the sworn declaration from Enforcement staff, which we credit, Claimant's information did not lead to the success of the Covered Action. We decline Claimant's invitation to gather additional information from Other Agency staff on the basis of Claimant's speculation that Other Agency staff may have more information about Claimant's contributions to the Commission Investigation and the Covered Action than Commission staff themselves.

For these reasons, Claimant does not qualify for a whistleblower award.<sup>8</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>7</sup> Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

<sup>8</sup> Claimant's Response refers to guidance on OWB's website (the "Guidance") stating that OWB may seek information from other government agencies when processing award claims. However, as noted in the Guidance, and quoted in Claimant's Response, seeking information from another government agency "is particularly common with claims involving a related action, in which OWB is dependent on another agency to provide information unavailable to SEC." Had Claimant qualified for a whistleblower award in connection with the Covered Action, which Claimant did not, discussions with Other Agency staff might have been warranted to determine if Claimant was eligible for a related action award. However, a related action award may be made only if, among other things, the claimant satisfies the eligibility criteria for an award for the applicable Commission covered action in the first instance. *See* 15 U.S.C. § 78u-6(b); Exchange Act Rule 21F-3(b), (b)(1); Rule 21F-4(g) and (f), and Rule 21F-11(a); Order Determining Whistleblower Award Claims, Release No. 34-84506 (Oct. 30, 2018); Order Determining Whistleblower Award Claims, Release No. 34-84503 (Oct. 30, 2018). Because Claimant is not qualified for an award in connection with the Covered Action, Claimant is ineligible for a related action award.