

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 96231 / November 4, 2022

WHISTLEBLOWER AWARD PROCEEDING

File No. 2023-13

In the Matter of the Claims for an Award

in connection with

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), Redacted (Claimant 2), and Redacted (Claimant 3) receive a joint whistleblower award of nearly \$1,600,000, which represents Redacted percent (%) of the monetary sanctions collected or to be collected in the above-referenced Covered Action (the “Covered Action”) and that Redacted (Claimant 4) receive a whistleblower award of nearly \$1,600,000, which represents Redacted percent (%) of the monetary sanctions collected or to be collected in the Covered Action. Claimants 1, 2, and 3 provided written notice of their decision not to contest the Preliminary Determinations. Claimant 4 filed a timely response contesting the Preliminary Determinations. For the reasons discussed below, the CRS’s recommendation is adopted with respect to Claimant 1, Claimant 2, Claimant 3, and Claimant 4.

I. Background

A. The Covered Action

The Commission filed the settled Covered Action on [Redacted]. The Commission’s complaint alleged that

[Redacted]

[Redacted]

[Redacted]

[Redacted]. The complaint further alleged that [Redacted]

[Redacted]

[Redacted]

[Redacted]. As

alleged in the complaint,

[Redacted]

[Redacted]

[Redacted]

[Redacted]. The complaint ***

[Redacted]

[Redacted]

The Commission charged the Company and [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]. As part of the settled action, the Company and [Redacted]

[Redacted]

[Redacted]

[Redacted]

The court approved the settlement and entered a final judgment. The Company and [Redacted] paid their total monetary sanctions as required under the court’s final judgment, including any prejudgment and post-judgment interest.

B. The Preliminary Determinations

The Claims Review Staff preliminarily determined to recommend to the Commission that it find that Claimant 1, Claimant 2, and Claimant 3 jointly¹ voluntarily provided original

¹ The CRS preliminarily determined to treat Claimant 1, Claimant 2, and Claimant 3 jointly as a “whistleblower” for purposes of the award determination given that they jointly submitted their tip. See Exchange Act Section 21F(a)(6) (defining “whistleblower” to mean “2 or more individuals acting jointly who provide[] information relating to a violation of the securities laws to the Commission”). Proceeding in this way has not impacted the net total award percentage to Claimant 1, Claimant 2, and Claimant 3. Unless Claimants 1, 2, and 3, within ten (10) calendar days of the issuance of this Order, make a joint request, in writing, for a different allocation of the award between the three of them, the Office of the Whistleblower is directed to pay each of them individually 33.33% of their joint award.

information² to the Commission that led to the successful enforcement of the referenced Covered Action pursuant to Section 21F(b)(1) of the Exchange Act and Rule 21F-3(a) promulgated thereunder, and that Claimant 1, Claimant 2, and Claimant 3 receive a joint award of *** % of the monetary sanctions collected in the Covered Action.

The Claims Review Staff also preliminarily determined to recommend to the Commission that it find that Claimant 4 voluntarily provided original information³ to the Commission that led to the successful enforcement of the referenced Covered Action pursuant to Section 21F(b)(1) of the Exchange Act and Rule 21F-3(a) promulgated thereunder, and that Claimant 4 receive an award of *** % of the monetary sanctions collected in the Covered Action.

C. Claimant 4’s Response to the Preliminary Determinations

Claimant 4 requested reconsideration of the Preliminary Determinations asserting that (1) the information submitted by Claimants 1, 2, and 3 was not original information because it was based on information Claimant 4 submitted to ^{Redacted} (“Research Publication”), and (2) that the CRS overlooked several contributions made by Claimant 4 to the staff’s investigation, as well as hardships Claimant 4 suffered, when determining the award percentage.

First, Claimant 4 contends that Claimants 1, 2, and 3 did not provide the Commission with original information concerning ^{Redacted}

² Claimants 1, 2, and 3 provided original information based on both independent knowledge and independent analysis. To be credited with providing independent analysis, the whistleblower’s examination and evaluation should contribute significant information that “bridges the gap” between the publicly available information and the possible securities violations. “[I]n each case, the touchstone is whether the whistleblower’s submission is revelatory in utilizing publicly available information in a way that goes beyond the information itself and affords the Commission with important insights or information about possible violations.” Adopting Release for Amendments to Whistleblower Rules, Release No. 34-89963 (Sept. 23, 2020) (“Adopting Release”) at 112-13. Here, Claimants 1, 2 and 3 (the “joint claimants”) used their specialized knowledge to evaluate and analyze complex accounting data in public filings. According to Commission staff, their expertise assisted the staff in understanding complex accounting principles and transactions that furthered the investigation. Additionally, the joint claimants are not excluded from award eligibility by virtue of Exchange Act 21F-8(c)(4), which precludes award eligibility if a claimant “obtained the original information ... through an audit of a company’s financial statements, and making a whistleblower submission would be contrary to requirements of Section 10A of the Exchange Act (15 U.S.C. 78j-a).” While Claimant 3 was ^{Redacted}, the record reflects that Claimant 3 ^{Redacted}

³ ^{Redacted}. As such, the joint claimants’ whistleblower TCR, filed approximately six months after Claimant 3’s ^{Redacted}

³ The CRS preliminarily determined that Claimant 4 satisfied the original information requirement by providing independent analysis. Here, Claimant 4 used specialized knowledge to evaluate and analyze complex accounting data in public filings. According to Commission staff, this expertise assisted the staff in understanding complex accounting principles and transactions that furthered the investigation.

Redacted .⁴ Claimant 4 contends without support that he/she provided information concerning Redacted to the Research Publication, which then published Claimant 4's information on Redacted. Claimant 4 claims that Claimants 1, 2, and 3 used this information for their tip to the Commission. Claimant 4 acknowledges that the Redacted report only focused on Redacted, but contends that it also provided evidence Redacted. Claimant 4 claims that the Research Publication's Redacted report Redacted using the same sources of information that Claimant 4 ultimately provided to the Commission. Claimant 4 asserts that Claimants 1, 2, and 3 Redacted and that Claimant 4 was the original source of the information published therein.⁵

Second, Claimant 4 asserts that the CRS overlooked numerous contributions he/she made to the staff's investigation, including: (1) Redacted; (2) Redacted; (3) Redacted; (4) Redacted; (5) Redacted; and (6) Redacted.

Finally, Claimant 4 asserts that the CRS did not consider unique hardships he/she endured due to his/her whistleblowing, including being subjected to numerous threats of litigation from the Company and other harassment.⁶

⁴ In his/her award application, Claimant 4 also stated he/she was the original source of information underlying a report published by the Research Publication on Redacted, which raised concerns about the Company's Redacted. In addition, Claimant

4 states that he/she raised these same issues in a Redacted. However, we do not need to resolve this issue because neither Claimant 4, nor the joint claimants, are receiving credit for their analysis of Redacted because that information did not become part of the charges in the Covered Action.

⁵ Claimant 4 also claims that Claimant 2 acknowledged in Redacted that Claimants 1, 2, and 3 Redacted. However, Claimant 4 provides no corroborating evidence of this alleged statement.

⁶ Claimant 4 also requested that the record be amended to include all of his/her Forms TCR, including attachments and other related materials he/she provided to the Commission. However, no amendment to the record is necessary here because the initial staff declaration acknowledges Claimant 4's numerous TCR submissions, including those specifically cited in Claimant 4's response, and the supplemental staff declaration further explains the contributions, if any, that the information those submissions had to the investigation.

II. Analysis

A. Claimants 1, 2, and 3

The record demonstrates that Claimants 1, 2, and 3 voluntarily provided original information to the Commission that caused Enforcement staff to inquire into new conduct as part of an existing investigation and led to the success of the Covered Action.

The CRS preliminarily determined that Claimants 1, 2, and 3

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. Claimant 1,

Claimant 2, and Claimant 3 provided new information that caused the staff to inquire into new conduct as part of its existing investigation and provided substantial assistance during the course of the investigation, including providing additional information and participating in interviews with the staff.

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Redacted¹⁰ Furthermore, Claimant 1, 2, and 3's contributions to the success of the Covered

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respect to this part of the Covered Action, the staff was already aware of the ^{Redacted}
was primarily focused on determining ^{Redacted} based on the Company's internal
documents and witnesses, as well as the documents of witnesses of relevant third parties.
Claimant 4's information and analyses were based upon publicly available information only.
Claimant 4 also contends that ^{Redacted}

^{Redacted}

^{Redacted}

^{Redacted}

. However, the record does not establish that Claimant
4 was in fact the cause of these events. Finally, while Claimant 4 contends that he/she provided
the staff with detailed information concerning ^{Redacted}, this information did not
assist or further the Covered Action investigation because this information was already known to
the staff from the Company's internal documents prior to Claimant 4 submitting his/her
information. Additionally, while Claimant 4 claims that he/she faced threats of litigation and
other harassment, Claimant 4 has not substantiated hardships that warrant an increase in award
percentage in light of all the facts and circumstances in this matter.

III. Conclusion

Accordingly, it is hereby ORDERED that Claimant 1, Claimant 2, and Claimant 3 shall
receive a joint award equal to ^{Redacted} percent (^{***} %) of the monetary sanctions collected in the
Covered Action and that Claimant 4 receive an award equal to ^{Redacted} percent (^{***} %) of the
monetary sanctions collected in the Covered Action.

By the Commission.

Vanessa A. Countryman
Secretary