

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 96399 / November 29, 2022

WHISTLEBLOWER AWARD PROCEEDING  
File No. 2023-18

---

In the Matter of the Claims for Award

in connection with

Redacted

Notice of Covered Action Redacted

---

**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS**

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending that: (1) Redacted (“Claimant 1”) receive a whistleblower award in the amount of Redacted percent ( % ) of the monetary sanctions collected, or to be collected, in the above-referenced Covered Action; (2) Redacted (“Claimant 2”) receive a whistleblower award in the amount of Redacted percent ( % ) of the monetary sanctions collected, or to be collected, in the Covered Action; (3) Redacted (“Claimant 3”) receive a whistleblower award in the amount of % percent ( % ) of the monetary sanctions collected, or to be collected, in the Covered Action; and (4) Redacted (“Claimant 4”) be denied a whistleblower award in the Covered Action.<sup>1</sup>

Claimant 1, Claimant 2, and Claimant 3 provided written notice of their decisions not to contest the Preliminary Determination.<sup>2</sup> Claimant 4 filed a timely response contesting the

---

<sup>1</sup> The CRS also preliminarily determined to recommend that the award application of one other claimant be denied. That claimant did not submit a request for reconsideration and, as such, the Preliminary Determination with respect to this claimant became the Final Order of the Commission, pursuant to Rule 21F-10(f).

<sup>2</sup> Claimant 2 and Claimant 3 also submitted claims for award for a separate Commission enforcement action. However, the CRS concluded that, because the Covered Action and the separate enforcement action did not arise out

Preliminary Determination. For the reasons discussed below, the CRS’s recommendations are adopted.

## I. Background

### A. The Covered Action

On [Redacted] the Commission filed the Covered Action in the [Redacted] (“Court”). The Commission charged [Redacted] (“Individual 1”), [Redacted] (“Individual 2”), [Redacted] (“Company 1”), and [Redacted] (“Company 2”) (collectively, “Defendants”) with [Redacted]. On [Redacted] the Court [Redacted] On [Redacted] the Court issued an order requiring that: (1) [Redacted] pay monetary sanctions totaling [Redacted] and (2) [Redacted] pay monetary sanctions totaling [Redacted]. The litigation involving [Redacted]

On [Redacted] the Office of the Whistleblower (“OWB”) posted the Notice of Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days. Claimants filed timely whistleblower award claims.

### B. The Preliminary Determination

The CRS issued a Preliminary Determination recommending that the Commission: (1) grant Claimant 1 an award equal to [Redacted] percent ([Redacted]%) of the monetary sanctions collected, or to be collected, in the Covered Action; (2) grant Claimant 2 an award equal to [Redacted] percent ([Redacted]%) of the monetary sanctions collected, or to be collected, in the Covered Action; (3) grant Claimant 3 an award equal to [Redacted] percent ([Redacted]%) of the monetary sanctions collected, or to be collected, in the Covered Action; and (4) deny Claimant 4 an award in the Covered Action.

The Preliminary Determination recommended that the Commission deny Claimant 4’s claim because no information submitted by Claimant 4 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 preliminarily concluded that Claimant 4’s

---

of the same nucleus of operative facts, there was no basis to treat the separate action as part of the Covered Action and these award claims should be denied. As noted, Claimant 2 and Claimant 3 provided written notice that they would not contest the Preliminary Determination, and, as such, the Preliminary Determination with respect to their award claims for the separate enforcement action became the Final Order of the Commission, pursuant to Rule 21F-10(f).

information did not either (1) cause the Commission to commence an examination, open or reopen an investigation, or inquire into different conduct as part of a current Commission examination or investigation pursuant to Rule 21F-4(c)(1); or (2) significantly contribute to the success of a Commission judicial or administrative enforcement action pursuant to Rule 21F-4(c)(2). The CRS preliminarily determined that Enforcement staff responsible for the Investigation (“Staff”) did not open the Investigation based on Claimant 4’s information. Additionally, the CRS preliminarily concluded that none of Claimant 4’s information significantly contributed to the success of the Covered Action because such information was already known to Staff and did not meaningfully advance the Investigation or the Covered Action. Finally, the CRS noted that none of Claimant 4’s information was used in, or had any impact on, the charges brought in the Covered Action.

### **C. Claimant 4’s Response to the Preliminary Determination**

Claimant 4 submitted a timely, written response contesting the Preliminary Determination.<sup>3</sup> Claimant 4 argues that he/she provided the Commission with important and extensive information and supporting documentation only two months after the Investigation was opened. Claimant 4 also asserts that he/she supplemented his/her tip with further information relevant to the Investigation and provided hundreds of additional documents from <sup>Redacted</sup> <sub>Redacted</sub>

Further, Claimant 4 states that in <sup>Redacted</sup> he/she participated in a six-hour in-person interview with the Commission, during which time Claimant 4 provided specific context and clarity related to the documents he/she had previously produced. Claimant 4 asserts that given his/her assistance to the Commission, Claimant 4 likely saved the Commission substantial time, energy, and resources in the course of the Investigation.

## **II. Analysis**

### **A. Claimant 1, Claimant 2, and Claimant 3**

The record demonstrates that Claimant 1, Claimant 2, and Claimant 3 voluntarily provided original information to the Commission, and their original information led to the successful enforcement of the Covered Action.<sup>4</sup> Further, the record reflects that: (1) Claimant 1’s information was significant, as it contributed to the decision by Staff to initiate the Investigation into misconduct related to Defendants; (2) Claimant 1 submitted information and documents to Staff and spoke with Staff at least once; (3) Claimant 1’s information helped guide the early stages of the Investigation; and (4) Claimant 1 raised his/her concerns regarding

---

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

<sup>4</sup> 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).

Company 1 and Company 2 internally. Additionally, the record reflects that: (1) Claimant 2's information was significant, as it contributed to the decision by Staff to initiate the Investigation; (2) Claimant 2 submitted information and documents to Staff, spoke with Staff at least once, and Redacted in connection with the Covered Action; and (3) Claimant 2's information was helpful in that it included details about how Defendants Redacted Redacted. Finally, the record reflects that: (1) Claimant 3's information significantly contributed to the Covered Action; (2) Claimant 3 submitted information and documents to Staff, spoke with Staff, and Redacted in connection with the Covered Action; and (3) Claimant 3's information—which focused on Claimant 3's Redacted communications with certain of the Defendants—was more limited as compared to the information and assistance provided by Claimant 1 and Claimant 2, whose information opened the Investigation.<sup>5</sup>

In light of these considerations and the relevant factors specified in Rule 21F-6,<sup>6</sup> it is appropriate that Claimant 1 receive an award of Redacted percent ( % ) of the monetary sanctions collected, or to be collected, in the Covered Action; Claimant 2 receive an award of Redacted percent ( % ) of the monetary sanctions collected, or to be collected, in the Covered Action; and Claimant 3 receive an award of % percent ( % ) of the monetary sanctions collected, or to be collected, in the Covered Action.

## **B. Claimant 4**

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>7</sup> As relevant here, under Rule 21F-4(c)(1) and Rule 21F-

---

<sup>5</sup> In Claimant 3's Form TCR, Claimant 3 argued that the documents and information being provided to the Commission were supplements to Claimant 2's prior tip. In Claimant 3's award application, Claimant 3 requested that the Commission review Claimant 2's initial tip, along with all supporting documents and emails that Claimant 2 previously provided to Staff related to Claimant 2's tip. However, although Claimant 2 and Claimant 3 were represented by the same counsel, they are not joint whistleblowers, and Claimant 3 only approached the Commission well after Claimant 2 came forward to the Commission. Further, there was no connection between Claimant 2's information and Claimant 3's information. Therefore, we are only considering Claimant 3's own information and assistance that he/she supplied directly to the Commission.

<sup>6</sup> In determining the amount of the award to Claimant 1, Claimant 2, and Claimant 3, we considered the following factors set forth in Rule 21F-6 as they apply to the facts and circumstances of their application: (1) the significance of information provided; (2) the assistance provided; (3) the law enforcement interest in deterring violations by granting awards; (4) participation in internal compliance systems; (5) culpability; (6) unreasonable reporting delay; and (7) interference with internal compliance and reporting systems.

<sup>7</sup> Exchange Act Section 21F(b)(1), 15 U.S.C. §78u-6(b)(1).

4(c)(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>8</sup> or (ii) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”<sup>9</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>10</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>11</sup>

Claimant 4 does not qualify for an award under either of the above-described provisions. We credit Staff’s declaration (“Declaration”), provided under penalty of perjury, which confirms that Staff opened the Investigation, in part, because of tips that the Commission received from certain individuals (other than Claimant 4), including Claimant 1 and Claimant 2.<sup>12</sup>

Additionally, while Staff communicated with and received information from Claimant 4, Claimant 4 did not provide information that significantly contributed to the success of the Covered Action. Beyond Claimant 4’s tip, Claimant 4 spoke to Staff via telephone with his/her counsel in March 2017, subsequently provided a thumb drive of additional internal corporate documents, and sat for testimony before the Commission in <sup>Redacted</sup>. Claimant 4 argues that

---

<sup>8</sup> See Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

<sup>9</sup> See Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

<sup>10</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.

<sup>11</sup> Exchange Act Rel. No. 85412 at 8–9.

<sup>12</sup> Claimant 4 alleges in his/her reconsideration request that before the Investigation was opened, he/she spoke to a Commission analyst in <sup>Redacted</sup> for approximately 15 minutes. According to Claimant 4, during this conversation, Claimant 4 provided the Commission analyst with an overview of Company 1’s and Company 2’s business practices. However, according to the statements in Claimant 4’s own TCR, he/she did not disclose the names of Company 1 or Company 2 during this conversation. Since Claimant 4 did not disclose any company names during this August 2016 conversation, there is insufficient evidence for the Commission to conclude that this conversation caused the opening of the Investigation.

in light of the volume of the documents he/she provided in his/her initial tip and then again following Claimant 4's discussion with Staff, it is difficult to believe that none of the documents were documents that the Commission did not already have or did not use in the Investigation. Claimant 4 also argues that the documents he/she provided were from a Company 1 hard drive and were subject to a non-disclosure agreement that contained materials that were not widely circulated or publicly available. Claimant 4 alleges that it is doubtful that the Commission received duplicative information and files from other Company 1 <sup>Redacted</sup> Claimant 4 believes that the Commission brought the Covered Action based, in part, on at least some of Claimant 4's information; Claimant 4 therefore alleges that he/she deserves to receive at least a portion of any award issued for the Covered Action.

Despite Claimant 4's contentions, Staff was already aware of Claimant 4's information through its own investigative efforts, as confirmed by the Declaration. The Declaration also confirms that Staff obtained the documentation that Claimant 4 provided from other sources. The Declaration explains in detail why Claimant 4's information and documentation did not substantially advance or impact the Investigation and why none of Claimant 4's information was used in, or had any impact on, the charges brought by the Commission in the Covered Action.

### **III. Conclusion**

Accordingly, it is hereby ORDERED that: (1) Claimant 1 shall receive an award of <sup>Redacted</sup> percent ( <sup>\*\*\*</sup> %) of the monetary sanctions collected, or to be collected, in the Covered Action; (2) Claimant 2 shall receive an award of <sup>Redacted</sup> percent ( <sup>\*\*\*</sup> %) of the monetary sanctions collected, or to be collected, in the Covered Action; (3) Claimant 3 shall receive an award of <sup>\*\*\*</sup> percent ( <sup>\*\*\*</sup> %) of the monetary sanctions collected, or to be collected, in the Covered Action; and (4) the whistleblower application of Claimant 4 in connection with the Covered Action be, and hereby is, denied.

By the Commission.

Vanessa A. Countryman  
Secretary