

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 96656 / January 13, 2023

WHISTLEBLOWER AWARD PROCEEDING  
File No. 2023-25

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In the Matter of the Claims for an Award

in connection with

Redacted

Redacted

Notice of Covered Action <sup>Redacted</sup>

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS**

The Claims Review Staff (“CRS”) issued Preliminary Determinations in connection with the above-referenced Covered Action (the “Covered Action”) recommending that <sup>Redacted</sup> (“Claimant 1”) receive a whistleblower award of more than \$5 million, equal to <sup>\*\*\*</sup> percent (<sup>\*\*\*</sup> %) of the monetary sanctions collected in the Covered Action and that the award claim submitted by <sup>Redacted</sup> (“Claimant 2”) be denied. Claimant 1 provided written notice of Claimant 1’s decision not to contest the Preliminary Determination. Claimant 2 filed a timely response contesting the Preliminary Determination. For the reasons discussed below, the CRS’s recommendations are adopted with respect to Claimants 1 and 2.

**I. Background**

**A. The Covered Action**

On <sup>Redacted</sup>, the Commission instituted an administrative proceeding charging <sup>Redacted</sup> with violating <sup>Redacted</sup>

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Among other relief, the Commission ordered <sup>Redacted</sup> which was fully collected by the Commission.

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

## **B. The Preliminary Determinations**

The CRS issued Preliminary Determinations<sup>2</sup> recommending that Claimant 1 receive a whistleblower award in the amount of <sup>\*\*\*</sup> percent (<sup>\*\*\*</sup> %) of the monetary sanctions collected and that Claimant 2’s claim be denied. The Preliminary Determination explained that Claimant 2 is ineligible for an award because Claimant 2 did not provide information that led to the success of the Covered Action. Claimant 2’s information did not cause Commission staff to open an investigation or inquire into different conduct in an existing investigation or significantly contribute to the success of the Covered Action. Commission staff reviewed Claimant 2’s tip, but the allegations were vague and conclusory, and staff closed the tip with no further action planned. Commission staff responsible for the Covered Action investigation did not communicate with Claimant 2, and Claimant 2’s information did not advance the investigation in any way.<sup>3</sup>

## **C. Claimant 2’s Response to the Preliminary Determination**

Claimant 2 submitted a timely written response contesting the Preliminary Determination.<sup>4</sup> Specifically, Claimant 2 argues in response to the Preliminary Determination that (i) there is a factual nexus between Claimant 2’s tip and the Covered Action and Commission staff should not have found Claimant 2’s tip to be “conclusory”<sup>5</sup>; (ii) Claimant 2 *may* have been the “original source” of the information that prompted staff to open the Covered Action investigation because Claimant 2 provided information to law firms in an effort to retain counsel and submitted information close in time to another tip mentioned in the record; (iii) Claimant 2 should be treated as a joint claimant with Claimant 1 and given an award; and (iv) there were redactions in the record provided to Claimant 2, which diminished Claimant 2’s

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

<sup>2</sup> See Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d).

<sup>3</sup> The Preliminary Determination also noted that Claimant 2 appears to have submitted a claim for a related action award based on information Claimant 2 provided to <sup>Redacted</sup>.  
<sup>Redacted</sup> The Commission staff is unaware of <sup>Redacted</sup> action, and even if there was one, Claimant 2 is not eligible for a related action award because Claimant 2 is not eligible for an award in connection with the Covered Action. Claimant 2 did not address any related action claim in Claimant 2’s response to the Preliminary Determination.

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

<sup>5</sup> Claimant 2 also argues that “it is possible” Claimant 2’s tip provided insights that “bridged the gap” and enhanced Commission staff’s knowledge of the overall fraudulent scheme and Commission staff improperly designated Claimant 2’s tip as requiring no further action and should have conducted additional fact-finding.

ability to adequately assess all circumstances and/or devise an appropriate response.

## **II. Analysis**

### **A. Claimant 1**

The record demonstrates that Claimant 1 voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action.<sup>6</sup> Accordingly, Claimant 1 qualifies for a whistleblower award.

Applying the award criteria in Rule 21F-6 of the Exchange Act to the specific facts and circumstances here, we find the proposed award amount is appropriate.<sup>7</sup> Claimant 1 submitted a tip and additional information that helped Commission staff shape its investigative strategy, identify witnesses, and draft document and information requests and subpoenas, saving Commission time and resources during the investigation. In addition, Claimant 1 provided substantial ongoing assistance to investigative staff and had internally reported concerns prior to submitting information to the Commission.

### **B. Claimant 2**

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.<sup>8</sup> 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.”<sup>9</sup> Alternatively, information will be deemed to have led to a successful enforcement action where the information was “about conduct that was already under examination or investigation by the Commission” and the

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<sup>6</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). While Claimant 1’s initial submissions were the impetus for the opening of the Covered Action investigation, Claimant 1’s initial submissions were not accompanied by a Form TCR. Claimant 1, however, thereafter submitted a Form TCR through counsel with new information that significantly contributed to the success of the Covered Action, thereby establishing an independent basis for Claimant 1’s award eligibility.

<sup>7</sup> In assessing the appropriate award amount, Exchange Act Rule 21F-6 provides that the Commission consider: (1) the significance of information provided to the Commission; (2) the assistance provided in the Commission action; (3) 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. 17 C.F.R. § 240.21F-6.

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

<sup>9</sup> Exchange Act Rule 21F-4(c)(1).

“submission significantly contributed to the success of the action.”<sup>10</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>11</sup>

Claimant 2’s information does not satisfy Exchange Act Rule 21F-4(c)(1) because it did not cause the Covered Action investigation to be opened or cause staff to inquire into different conduct in the Covered Action investigation. Claimant 2 submitted a tip three years before the opening of the Covered Action investigation. According to Commission staff, Claimant 2’s allegations were vague and conclusory, and Commission staff did not open an investigation based on Claimant 2’s tip. According to the Commission’s TCR system, staff closed Claimant 2’s tip with no further action planned.

In addition, Claimant 2’s information does not satisfy Exchange Act Rule 21F-4(c)(2) because it did not significantly contribute to the success of the Covered Action. As part of the Covered Action investigation, Commission staff responsible for the investigation reviewed Claimant 2’s tip, but found it did not provide information that would advance the investigation, facilitate investigative staff’s development of targeted subpoena or document requests, allow staff to conserve resources, reveal the roles of any particular individuals involved in potential misconduct, or otherwise contribute to the success of the Covered Action. None of the staff responsible for the Covered Action investigation recall communicating with Claimant 2 before or during the investigation.

Claimant 2’s argument in Claimant 2’s response that there is a factual nexus between Claimant 2’s tip and the Covered Action is not dispositive of Claimant 2’s award eligibility. Claimant 2’s information did not cause staff to open the Covered Action investigation or inquire concerning different conduct or significantly contribute to the success of the Covered Action. As a result, Claimant 2’s information did not lead to the success of the Covered Action. Award eligibility is based on whether a whistleblower’s information actually contributes to the success of a covered action, not on what staff “should have or could have” done with the information.<sup>12</sup>

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<sup>10</sup> Exchange Act Rule 21F-4(c)(2).

<sup>11</sup> See *Order Determining Whistleblower Award*, Whistleblower File No. 2019-4, at 9, 2019 SEC LEXIS 615 at \*16 (Mar. 26, 2019); see also *Securities Whistleblower Incentives & Protections*, 76 Fed. Reg. 34300, 34325 (June 13, 2011) (in determining whether information significantly contributed to an enforcement action, the Commission will consider whether the information allowed the agency to bring the action in significantly less time or with significantly fewer resources, additional successful claims, or successful claims against additional individuals or entities).

<sup>12</sup> See *Order Determining Whistleblower Award Claim*, Release No. 34-79294 (Nov. 14, 2016) (denying whistleblower award to claimant who argued that staff errors resulted in improper processing of submission, on grounds that the information submitted did not actually lead to successful enforcement of covered action), *pet. rev. denied sub nom. Doe v. SEC*, 729 F. App’x 1 (D.C. Cir. 2018); see also *Order Determining Whistleblower Award Claim*, Release No. 34-88667 (Apr. 16, 2020) (“We must look to whether the Claimant’s information actually contributed to the success of the Covered Action, not whether ‘it should have or could have,’ as

Claimant 2’s argument that Claimant 2 *may* have been the “original source” of the information that prompted staff to open the Covered Action investigation because Claimant 2 provided information to law firms in an effort to retain counsel and submitted information close in time to another tip mentioned in the record is speculative and not supported by the record. The record is clear that Claimant 1’s initial submissions were the impetus for the opening of the Covered Action investigation. While Claimant 1 was represented by counsel, Claimant 1 learned the information submitted to the Commission through <sup>Redacted</sup> and not from Claimant 1’s counsel. Moreover, Claimant 2 does not name any counsel or law firm in Claimant 2’s response and merely mentions consulting firms <sup>Redacted</sup>. Claimant 1’s counsel is <sup>Redacted</sup>. In addition, the tip referenced in the record and submitted around the same time as Claimant 2’s information was not submitted by Claimant 1. Claimant 1 began submitting information to the Commission almost three years after the Commission received that tip, and it was Claimant 1’s information that was the impetus for the opening of the investigation.

Claimant 2’s argument that Claimant 2 should be treated as a “joint whistleblower” with Claimant 1 is misplaced. Pursuant to Rule 21F-2(a)(1), “[y]ou are a whistleblower [for purposes of Section 21F of the Exchange Act (15 U.S.C. 78u-6) as of the time that], alone or jointly with others, you provide the Commission with information” in writing that relates to a possible violation of the federal securities laws. Claimants 1 and 2 did not submit a tip jointly, act jointly during the course of the Covered Action investigation, nor apply jointly for a whistleblower award.

Finally, Claimant 2’s argument that the Office of the Whistleblower’s (“OWB”) redactions to the record provided to Claimant 2 unfairly diminished Claimant 2’s ability to adequately assess all circumstances and/or devise an appropriate response is unavailing. Under Rule 21F-12(b), OWB may make redactions as necessary to comply with any statutory restrictions, which includes protecting the identity of other whistleblowers in the matter. The redactions to the record provided to Claimant 2 were done in accordance with Rule 21F-12(b).

We therefore conclude that Claimant 2’s information did not lead to the successful enforcement of the Covered Action, and that, as a result, Claimant 2 is ineligible for a whistleblower award.

#### **IV. Conclusion**

Accordingly, it is ORDERED that Claimant 1 shall receive an award of <sup>\*\*\*</sup> percent (<sup>\*\*\*</sup> %) of the monetary sanctions collected in the Covered Action and that Claimant 2’s whistleblower award application be, and hereby is, denied.

By the Commission.

J. Matthew DeLesDernier  
Deputy Secretary

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Claimant urges us to do.”).