

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 96669 / January 17, 2023

WHISTLEBLOWER AWARD PROCEEDING

File No. 2023-29

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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 CLAIMS**

The Claims Review Staff (“CRS”) issued Preliminary Determinations recommending the denial of the whistleblower award claims submitted by Redacted (“Claimant 1”), Redacted (“Claimant 3”), and Redacted (“Claimant 4,” and collectively “Claimants”) in connection with the above-referenced covered action (the “Covered Action”). Claimants filed timely responses contesting the preliminary denials. For the reasons discussed below, Claimant 1’s, Claimant 3’s, and Claimant 4’s award claims are denied.<sup>1</sup>

**I. Background**

**A. The Covered Action**

On Redacted Redacted the Commission instituted settled cease-and-desist proceedings against Redacted (the “Company”) alleging that the Company Redacted

Redacted The Commission charged the Company with Redacted The Company agreed to pay a civil monetary penalty of Redacted

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<sup>1</sup> The CRS also recommended the denial of the award application from Claimant 2 who did not contest the Preliminary Determinations. Accordingly, the Preliminary Determinations with respect to Claimant 2’s award claim became the Final Order of the Commission through operation of Exchange Act Rule 21F-10(f), 17 C.F.R. §240.21F-10(f).

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. Claimants filed timely whistleblower award claims.

## **B. The Preliminary Determinations**

On <sup>Redacted</sup> the CRS issued Preliminary Determinations recommending that Claimants’ claims be denied because Claimants 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 stated that Claimants’ 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 the investigation which led to the Covered Action (the “Investigation”) was opened based upon information reported in the news media and not in response to any information provided by any of the Claimants. The CRS also preliminarily determined that none of the Claimants’ information significantly contributed to the success of the Covered Action. Enforcement staff assigned to the Investigation received Claimant 1’s information approximately four months after the Investigation was opened, and the staff was already aware of the underlying conduct alleged in Claimant 1’s complaint. In addition, while Claimant 1 provided certain information to the Commission about Claimant 1’s family experiences, none of the information advanced the Investigation or otherwise impacted the charges brought by the Commission in the Covered Action. The CRS stated that staff assigned to the Investigation did not receive or review any information from Claimant 3 or Claimant 4 and that none of their information advanced or contributed to the Investigation or the Covered Action.

## **C. Claimant 1’s Response to the Preliminary Determinations**

Claimant 1 submitted a timely written response contesting the Preliminary Determinations.<sup>2</sup> Claimant 1 principally argues that a tip he/she submitted to the Commission in <sup>Redacted</sup> in conjunction with an earlier tip from <sup>Redacted</sup> was the “catalyst” for the Investigation as well as for the media articles and the Company’s disclosure of the misconduct. Claimant 1 also argues that he/she had been in a dispute with the Company since <sup>Redacted</sup> approximately seven years prior to the issuance of the Covered Action, and that the Company was aware of the wrongdoing since at least that time. Claimant 1 contends that he/she alerted the Company to his/her whistleblower complaints approximately ten days before the Company began publicly disclosing the misconduct. Claimant 1 requests that the Commission “re-open their investigation of [Company’s] fraud to penalize [Company] with a substantially more significant and appropriate financial fine, and to require [the Company] to pay disgorgement of their ill-gotten gains . . . .”

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

#### **D. Claimant 3's Response to the Preliminary Determinations**

Claimant 3 submitted a timely written response contesting the Preliminary Determinations. Claimant 3 principally contends that the tip he/she submitted to the Commission on <sup>Redacted</sup> less than a week before media reports of the Company's misconduct, was the "impetus" for opening the Investigation. Claimant 3 further argues that his/her information persuaded the Company's personnel to acknowledge the misconduct, cooperate with the staff, and enter into a settlement with the Commission, and that none of the staff's Investigation would have occurred without the initial tip he/she submitted. Claimant 3 also argues that because the staff declaration relied upon by the CRS was signed after the date of the Preliminary Determinations, the CRS "came illegally to such conclusion," and instead the CRS should have recommended an award to Claimant 3. Claimant 3's response also cites to 30 other TCRs, all submitted after the Covered Action was instituted, in support of his/her claim for award.

#### **E. Claimant 4's Response to the Preliminary Determinations**

Claimant 4 submitted a timely written response contesting the Preliminary Determinations. Claimant 4 principally contends that the CRS had "no basis in fact or law, to arrive at such an egregious and inaccurate conclusory statement regarding [Claimant 4's] original, personal, firsthand, fact information therein properly submitted." Claimant 4 alleges that he/she provided the staff with original information, and that Claimant 4 filed a lawsuit in <sup>Redacted</sup> approximately 6 years before the Covered Action was filed, that was a "gold mine for any State interested in prosecuting violations . . . committed by [the Company]." Claimant 4 argues that he/she is the original source of the violations cited in the Covered Action, stating that "[a]ny relevant facts reported in above news media, predating these media reports, came directly from the only original source of this firsthand fact information pertaining to [the Company] . . . , facts that were extracted from [Claimant 3's lawsuit]."

## **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>3</sup> As relevant here, under Exchange Act Rules 21F-4(c)(1) and (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>4</sup> or (ii) the conduct was already under examination or investigation, and the original information "significantly contributed to the success of the action."<sup>5</sup> In addition, "[t]he Commission will consider you to be an original

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<sup>3</sup> Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

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

<sup>5</sup> See Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

source of the same information that we obtain from another source if the information satisfies the definition of original information and the other source obtained the information from you or your representative.”<sup>6</sup>

In determining whether 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>7</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>8</sup>

### A. Claimant 1

Claimant 1 does not qualify for a whistleblower award in this matter because his/her information did not cause the staff to open the Investigation, nor did Claimant 1’s information cause the staff to inquire into different conduct in or significantly contribute to the ongoing Investigation. The record demonstrates that the Investigation was opened based on public news articles regarding the Company’s misconduct, not based upon Claimant 1’s information, and staff assigned to the Investigation did not receive or review Claimant 1’s <sup>Redacted</sup> tip. There is also no evidence in the record showing that Claimant 1’s information was the original source of the press articles that were the impetus for the staff to open the Investigation.<sup>9</sup> Further, the record does not contain sufficient evidence to show that Claimant 1’s information caused or contributed to the Company’s decision to begin an internal investigation or report to the Commission.<sup>10</sup>

And while the staff communicated with Claimant 1 after the Investigation was opened, Claimant 1’s information did not advance or significantly contribute to the Investigation or cause the staff to inquire into different conduct. By the time that the staff spoke with Claimant 1 in or about <sup>Redacted</sup> the staff was already aware of the misconduct based upon self-disclosures by

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<sup>6</sup> See Exchange Act Rule 21F-4(b)(5), 17 C.F.R § 240.21F-4(b)(5).

<sup>7</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>8</sup> Exchange Act Rel. No. 85412 at 8-9.

<sup>9</sup> Enforcement staff also confirmed, in a supplemental declaration, which we credit, that the staff was not aware of any information indicating that the news articles at issue were based upon Claimant 1’s information.

<sup>10</sup> Accordingly, Claimant 1 is not eligible for an award pursuant to Exchange Act Rule 21F-4(c)(3). Rule 21F-4(c)(3) permits an individual to receive an award if, among other things, the individual reports original information through an entity’s internal whistleblower, legal, or compliance procedures and the entity later provides that information to the Commission or provides the results of an audit or investigation initiated in whole or in part by the individual to the Commission. To qualify for an award under Rule 21F-4(c)(3), an individual must also submit the same information to the Commission within 120 days of providing it to the entity. Claimant 1 also did not meet this requirement. Claimant 1 submitted his/her initial TCR to the Commission in <sup>Redacted</sup> while Claimant 1’s prior correspondence with the Company allegedly reporting misconduct occurred as late as <sup>Redacted</sup> more than six months (and therefore more than 120 days) earlier.

the Company and meetings with Company representatives. The staff also confirmed in a supplemental declaration that Claimant 1's information did not advance the Investigation or contribute to the charges in the Covered Action. For these reasons, Claimant 1 is not eligible for a whistleblower award in this matter.<sup>11</sup>

### **B. Claimant 3**

Claimant 3 is not eligible for a whistleblower award because Claimant 3's information did not cause the staff to open the Investigation, to inquire into different conduct as part of an existing investigation, or significantly contribute to the Investigation. As previously stated, the Investigation was opened based upon articles in the press, not based upon information provided by any claimant. Staff assigned to the Investigation did not recall receiving any information from Claimant 3, nor did the staff recall communicating with Claimant 3. The staff further confirmed in a supplemental declaration that the staff did not recall receiving or reviewing the <sup>Redacted</sup> tip that Claimant 3 asserts caused the staff to open the Investigation, nor did the staff recall receiving or reviewing any of the other TCR submissions listed in Claimant 3's response. The staff also confirmed that the staff did not recall receiving any information from Claimant 3 or communicating with Claimant 3. And there is no evidence in the record that Claimant 3's information was the original source of the press articles that were the impetus for the staff to open the Investigation, or that Claimant 3's information caused the Company to cooperate and enter into a settlement with the Commission.<sup>12</sup> Accordingly, Claimant 3 is not entitled to an award.<sup>13</sup>

### **C. Claimant 4**

Claimant 4 does not qualify for a whistleblower award because Claimant 4's information did not cause the staff to open the Investigation, to inquire into different conduct as part of an existing investigation, or significantly contribute to the Investigation. Staff assigned to the Investigation did not recall receiving any information from Claimant 4, nor did the staff recall communicating with Claimant 4. To the extent that Claimant 4 argues that his/her <sup>Redacted</sup> lawsuit was the original source of information used by the staff, there is no evidence in the record supporting such a conclusion. Staff assigned to the Investigation confirmed in a supplemental declaration that the staff did not recall receiving or reviewing any information from the <sup>Redacted</sup>

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<sup>11</sup> Claimant 1's request that the Commission re-open the investigation of the Company and assign larger penalties to the Company is misplaced. Demands to re-open the staff's investigation are beyond the scope of this whistleblower award proceeding, which addresses whether claimants voluntarily provided original information that in fact led to the success of the Covered Action. *See* Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

<sup>12</sup> To the extent that Claimant 3 argues that the Commission has not provided him/her with the documents to which Claimant 3 is entitled, Claimant 3's arguments are unpersuasive. Claimant 3 was provided with the record materials relied upon by the CRS, as permitted under Rule 21F-12. To the extent Claimant 3 argues that he/she has not received documents pursuant to Freedom of Information Act ("FOIA") requests Claimant 3 filed with the Commission, Claimant 3's FOIA requests are beyond the scope of this whistleblower award proceeding.

<sup>13</sup> Claimant 3 also alleges that the CRS acted improperly by relying upon a staff declaration that was signed after issuance of the Preliminary Determinations. The unsigned and signed versions of the declaration are identical except for the signature such that the information relied upon by the CRS in its Preliminary Determinations was not affected by the signature being affixed after the CRS met to approve the Preliminary Determinations. *See Order Determining Whistleblower Award Claims*, Exchange Act Release No. 94743 at 2 n.6 (Apr. 18, 2022).

lawsuit filed by Claimant 4. In addition, there is insufficient evidence in the record to conclude that Claimant 4's lawsuit was the original source of the allegations in the media articles which caused the staff to open the Investigation.<sup>14</sup> Staff assigned to the Investigation also confirmed that the allegations of misconduct in the <sup>Redacted</sup> lawsuit were not alleged in the Covered Action. Accordingly, Claimant 4 is not entitled to an award.

### **III. Conclusion**

Accordingly, it is hereby ORDERED that the whistleblower award applications of Claimants in connection with the Covered Action be, and they hereby are, denied.

By the Commission.

Vanessa A. Countryman  
Secretary

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<sup>14</sup> In any event, we are not denying Claimant 4 on the grounds of original information under Rule 21F-4(b), but because Claimant 4's information did not lead to the success of a Commission enforcement action under Rule 21F-4(c).