ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued Preliminary Determinations recommending that (“Claimant 1”) receive a whistleblower award of about $2 million, which represents percent (*** ) of the monetary sanctions collected in the Covered Action and that (“Claimant 2”) receive a whistleblower award of about $500,000, which represents percent (*** ) of the monetary sanctions collected in the Covered Action. Claimant 2 has contested the Preliminary Determinations. For the reasons discussed below, the CRS’s recommendations are adopted.1

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1 The CRS also preliminarily determined to recommend that the award applications of four other claimants be denied. None of these claimants submitted a request for reconsideration and, as such, the Preliminary Determinations with respect to their award claims became the Final Order of the Commission, pursuant to Rule 21F-10(f).
I. Background

A. The Covered Action

On the Commission instituted a settled public administrative and cease-and-desist proceeding against (the “Firm”), finding that the Firm violated Specifically, the Commission found that, from the Firm was also found to have

Among other relief, the Firm was ordered to pay disgorgement of prejudgment interest and a civil money penalty of The amount of the monetary sanctions in the Covered Action has been fully collected.

The Office of the Whistleblower posted a Notice of Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications for the Covered Action within 90 days. Claimants 1 and 2 filed timely whistleblower award claims.

B. The Preliminary Determinations

The CRS issued Preliminary Determinations recommending that Claimant 1 and 2 receive whistleblower awards of and respectively, of the monetary sanctions collected in the Covered Action. In recommending that Claimant 1 receive larger award than Claimant 2, the CRS reasoned that Claimant 1’s information was more important to the investigation because Claimant 1’s information was received by the Commission several years before Claimant 2’s information. The CRS also recommended that Claimant 2’s award be decreased due to unreasonable reporting delay.

C. Claimant 2’s Response to the Preliminary Determinations

Claimant 2 makes a number of arguments on reconsideration. First, Claimant 2 contends that the CRS failed to properly weigh the value of Claimant 2’s contribution to the investigation relative to Claimant 1’s, arguing that much of the information for which the CRS credited

2 See Exchange Act Rule 21F-10(a), 17 C.F.R. § 240.21F-10(a).
Claimant 1 was, in actuality, information Claimant 1 had received from Claimant 2. Third, Claimant 2 appears to dispute the CRS’s determination that Claimant 2 unreasonably delayed reporting his/her information to the Commission. Fourth, Claimant 2 contends that Claimant 1 did not fully understand all the intricacies of and that the CRS should have taken this into account in recommending an award percentage. Fifth, Claimant 2 asserts that the Preliminary Determination’s award allocation to him/her “underestimated” Claimant 2’s value to the staff as a live witness to the events they investigated, Claimant 2’s willingness to testify at trial, and the value Claimant 2’s information provided to the staff in its settlement negotiations with the Firm’s counsel.

Finally, Claimant 2 asserts that the Preliminary Determination he/she received contained redactions which, Claimant 2 believes, would have shown that key evidence credited as having been provided to the Commission by Claimant 1 was, in fact, evidence that Claimant 2 had given to Claimant 1 with the understanding that Claimant 1 would then forward it to the Commission. Claimant 2 argues that these redactions were “inappropriate given the voluntary waiver of [Claimant 1] of [his/her] anonymous status generally in the context of being a whistleblower but in particular as it pertains to [Claimant 2].”

II. Analysis

The record demonstrates that Claimant 1 and Claimant 2 each voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action.

Claimant 2 states that “[b]ut for [Claimant 2] giving [Claimant 1] the specific and credible information and instructing [Claimant 1] persistently to alert the Commission to for a number of years before the investigation was opened, there may well not have been an investigation.” This constitutes, according to Claimant 2, “punish[ing] [Claimant 2] unfairly while praising [Claimant 1] who was [Claimant 2]’s proxy, under the ‘but for’ cause in the opening of the investigation while failing to accord [Claimant 2] the same credit.”

While Claimant 2 does not explicitly state in his/her response that Claimant 2 believed the CRS erred in determining that he/she had unreasonably delayed reporting his/her information to the Commission, this argument is clearly implied by Claimant 2’s contention that, in the years before Claimant 2 filed his/her own TCR, he/she was providing important information to Claimant 1 with the understanding that Claimant 1 would then forward it to the Commission.

We adopt the CRS’s recommendations on award allocations. In reaching our award determinations, we positively assessed the following facts in support of Claimant 1’s larger award: (1) Claimant 1’s tip was the initial source of the underlying investigation; (2) Claimant 1’s tip including at the Firm, that would have been difficult to detect without Claimant 1’s information; (3) Claimant 1 provided Enforcement staff with extensive and ongoing assistance during the course of the investigation, including identifying witnesses and helping staff understand complex fact patterns and issues related to the matters under investigation; (4) the Commission used information Claimant 1 provided to devise an investigative plan and to craft its initial document requests; (5) Claimant 1 made persistent efforts to remedy the issues, while suffering hardships; and (6) Claimant 1 was the main source of information for the investigation and an important source of information for the Covered Action.

In assessing Claimant 2’s important, but lesser, contribution to the success of the Investigation, the Commission notes that Claimant 2 was the first witness who was able to tell the staff that the Firm knew or should have known key facts about including that Claimant 2 provided important information as a percipient witness which helped with factual details on those topics that went beyond what Claimant 1 had been able to provide. In addition, Claimant 2 provided information and documents, participated in staff interviews, and provided clear explanations to the staff.
regarding the issues that Claimant 2 brought to the staff’s attention. Claimant 2’s information gave the staff a more complete picture of how

discussions with the Firm’s counsel

suffered hardship as a result of his/her efforts to

Contrary to what Claimant 2 states in his/her reconsideration response, Claimant 2’s assertion as to the importance to the Commission’s investigation of Claimant 2’s information about

- a fact which Claimant 1 had acknowledged to the staff -- the information Claimant 1 provided to the Commission came originally from information Claimant 2 had provided to Claimant 1. Indeed, most of the documentation Claimant 2 offered to support his/her contentions consisted of emails that Claimant 2 was copied on or forwarded in which Claimant 1 communicated with Commission staff; emails Claimant 1 wrote to Claimant 2 and others discussing Claimant 1’s thoughts about, or news concerning, the Commission’s ongoing investigation; and Claimant 1’s efforts to reach out to others to inquire about

While the staff acknowledged, as Claimant 2 notes, that it did not inquire about what specific information Claimant 2 had given to Claimant 1 beyond

Claimant 2’s response does not contain evidence of other specific information Claimant 2 gave to Claimant 1. Regarding Claimant 2’s assertion that Claimant 1 did not fully comprehend

when Claimant 1 reported to the Commission, this does not change the fact that the Commission first learned about the underlying misconduct from Claimant 1 and that it was Claimant 1’s tips that caused the Commission to open the investigation and informed the investigation’s initial steps. Moreover, Claimant 2’s argument does not change the fact that Commission staff found Claimant 1’s information and assistance helpful during the course of its investigation.

We also find no merit in Claimant 2’s assertion that the redactions made in the Preliminary Determination he/she received may have shown that information the CRS credited as having been provided to the Commission by Claimant 1 was, in fact, evidence that Claimant 2 had given to Claimant 1 with the understanding that Claimant 1 would then forward it to the Commission. The redacted Preliminary Determination received by Claimant 2 did not redact any information about Claimant 1 other than Claimant 1’s name; the balance of the redactions concerned the other four whistleblowers who did not contest the Preliminary Determinations. There is similarly no merit in Claimant 2’s contention that the redactions made in the Preliminary Determination as to Claimant 1 were improper or inappropriate because Claimant 1

\[11\] See supra note 1.
had publicly disclosed his/her identity. Regardless of whether a whistleblower chooses to
publicly disclose his/her identity as a whistleblower, the Commission has a legal obligation
under Exchange Act Sec. 21F(h)(2) to “not disclose any information, including information
provided by a whistleblower to the Commission, which could reasonably be expected to reveal
the identity of a whistleblower,” except in certain limited circumstances not applicable here.
Thus, the redaction of Claimant 1’s name in Claimant 2’s Preliminary Determination is a
mandatory requirement under the law, not a discretionary decision by the CRS. 12

Contrary to Claimant 2’s contention that the award allocation in the Preliminary
Determination “underestimated” his/her value to the staff as a live witness, Claimant 2’s
willingness to testify at trial, and the value Claimant 2’s information provided to the staff in its
settlement negotiations with the Firm’s counsel, our order, in fact, discusses in detail and clearly
recognizes the value to the Commission of Claimant 2 being a witness to key events and the
usefulness of his/her information in settlement negotiations. With regard to Claimant 2’s
contention about the potential but unrealized value of his/her testimony at trial, the
Commission’s award determinations under Rule 21F-6 are based on whistleblowers’ actual
contributions, not hypothetical ones.

Finally, we note that, in contrast to Claimant 1, who persistently alerted the Commission
for a number of years before the investigation was opened, Claimant 2 delayed reporting to the Commission for several years. While Claimant 2 states that
he/she was aware as early as
Claimant 2 did not report to the Commission until at least five years after Claimant 2
was aware of the possible illegal nature of these transactions and four years after Claimant 2 left
his/her former employer. During this period, the harm continued to investors who were unaware
of the violative conduct. Accordingly, we find that Claimant 2 unreasonably delayed reporting
to the Commission and that Claimant 2’s award percentage should be set at.

12 Claimant 2 also faults Claimant 1 for indicating that Claimant 2 would share in the whistleblower awards
Claimant 1 expected to receive from the Commission and then not fulfilling his/her commitment to Claimant 2.
However, Claimant 1’s supposed commitment is irrelevant to our analysis of the respective award percentages that
each should receive.

13 In setting the award percentage at we took into consideration certain facts in the record relevant
to the issue of delay. Although the record demonstrates that Claimant 2 unreasonably delayed, we considered that
Claimant 2 provided Claimant 1 with information knowing that Claimant 1 was forwarding this information to the Commission
staff.
III. Conclusion

Accordingly, it is hereby ORDERED that (1) Claimant 1 receive an award of percent (*** ) of the monetary sanctions collected in the Covered Action; and (2) Claimant 2 receive an award of *** percent (*** ) of the monetary sanctions collected in the Covered Action.

By the Commission.

J. Lynn Taylor
Assistant Secretary