

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 97599 / May 26, 2023

WHISTLEBLOWER AWARD PROCEEDING  
File No. 2023-62

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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”) and Redacted (“Claimant 2,” collectively “Claimants”) in connection with the above-referenced covered action (the “Covered Action”). Claimants each filed a timely response contesting the preliminary denials. For the reasons discussed below, Claimants’ award claims are denied.

**I. Background**

**A. The Covered Action**

On Redacted the Commission instituted settled administrative and cease-and-desist proceedings against Redacted (the “Company”), Redacted alleging that the Company Redacted. Among other things, the Commission alleged Redacted

Redacted

The Commission charged the Company with violating

Redacted

In addition to other relief, the Commission ordered the Company to pay a civil money penalty in the amount of

On 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 Determination

The CRS issued Preliminary Determinations recommending that Claimants’ claims be denied because they 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 preliminarily determined 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. In particular, the CRS stated that investigative staff responsible for the Covered Action never received any information from, or had any communication with, either Claimant 1 or Claimant 2.

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

Claimant 1 submitted a response (the “Claimant 1 Response”) contesting the Preliminary Determinations.<sup>1</sup> In addition to discussing certain of the factual allegations raised in his/her submission, Claimant 1 argues, among other things, that the TCR he/she submitted to the Commission in “should lead to many investigatory avenues with monetary sanctions.” Specifically, Claimant 1 contends that the TCR, which was about the (the “Entity”), related substantially to the subject matter of the Covered Action because “discussing [the Entity] . . . also means [the Company] . . . one cannot separate one from the other.” Claimant 1 argues that his/her tip constituted original information that may have assisted the Commission’s investigative efforts in the Covered Action or in other matters. Claimant 1 also believes that his/her tip might have been shared with other government agencies and Claimant 1 might be entitled to a related action award. Claimant 1 also requested that the Commission exercise its authority to waive compliance with the whistleblower rules because of the “considerable efforts I have made to explain very complex transactions and markets, which should prove valuable for current and future investigations.” Claimant 1 also requests that “the ‘same nucleus of operative facts’ rule be reviewed as it relates to my TCR and claims.”

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

## D. Claimant 2's Response to the Preliminary Determinations

Claimant 2 submitted a response (the "Claimant 2 Response") contesting the Preliminary Determinations. Claimant 2 argues, among other things, that the record relied upon by the CRS appears to be "insufficient." Claimant 2 states that the staff declaration relied on by the CRS does not indicate whether the staff reviewed Claimant 2's submissions, or whether any of the Commission staff Claimant 2 spoke to and shared information with used that information in the investigation that led to the Covered Action (the "Investigation"). Claimant 2 also states that he/she spent significant time and energy providing information to Commission staff, and met in person with Commission staff on at least two occasions. Claimant 2 states that there is a "clear nexus" between the information Claimant 2 provided the Commission and the violative conduct in the Covered Action. Claimant 2 states that he/she attended a meeting with five Commission staff (the "Other Staff") in <sup>Redacted</sup> in <sup>Redacted</sup> and that he/she attended a second meeting with Commission staff in <sup>Redacted</sup> Claimant 2 also contends that he/she communicated with Commission staff for approximately fifteen months following the second meeting.

## II. Analysis

To qualify for an award under Section 21F of the Exchange Act, a claimant must, among other things, voluntarily provide the Commission with original information that leads to the successful enforcement of a covered action.<sup>2</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>3</sup> or (ii) the conduct was already under examination or investigation, and the original information "significantly contributed to the success of the action."<sup>4</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>5</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>6</sup>

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<sup>2</sup> Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

<sup>3</sup> See Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

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

<sup>5</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 (same).

<sup>6</sup> Exchange Act Rel. No. 85412 at 8-9.

## A. Claimant 1

Claimant 1 does not qualify for an award because Claimant 1's information did not lead to the successful enforcement of the Covered Action.<sup>7</sup> Enforcement staff assigned to the Investigation confirm that the Investigation was opened in <sup>Redacted</sup> Claimant 1 did not submit his/her TCR until <sup>Redacted</sup> over one year later. Further, the staff assigned to the Investigation confirmed, in a supplemental declaration, which we credit, that the staff did not receive or review Claimant 1's TCR submission, and that Claimant 1's information was not used in the Investigation or in the Covered Action.<sup>8</sup> Accordingly, we do not find Claimant 1's argument regarding his/her TCR persuasive: even if Claimant 1's discussion of the Entity equates to a discussion of the Company, Enforcement staff did not use the information.

Accordingly, Claimant 1 is not entitled to an award.<sup>9</sup>

## B. Claimant 2

Claimant 2 does not qualify for an award because Claimant 2's information did not lead to the successful enforcement of the Covered Action. First, Claimant 2's information did not cause the staff to open the Investigation. While Claimant 2 submitted several TCRs prior to the opening of the Investigation, the record shows, as stated above, that staff opened the Investigation based upon a <sup>Redacted</sup> referral from the Division of Examinations, not based upon any information from Claimant 2. In addition, the record does not show that Claimant 2's information caused Examinations staff to commence the exam that led to the referral. While two of Claimant 2's TCR submissions were forwarded to Examinations staff, those TCRs were forwarded to Examinations staff in the Commission's <sup>Redacted</sup> in connection with a potential examination of a different entity, not the Company, and Examinations staff ultimately decided not to pursue the topic. In addition, based on a supplemental declaration prepared by OWB staff, which we credit, Examinations staff responsible for the <sup>Redacted</sup> referral do not recall reviewing any information from Claimant 2. And while Enforcement staff relied upon two other referrals from Examinations during the Investigation, the record also shows that Examinations staff responsible for those referrals also did not recall reviewing Claimant 2's information.

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<sup>7</sup> In addition, Claimant 1's argument that his/her information may have assisted in other matters is not persuasive. Whistleblower awards are based upon the use of a claimant's information in the Covered Action before us. Any contribution from a claimant to other Covered Actions will be addressed in those proceedings.

<sup>8</sup> Claimant 1 also requests that "the 'same nucleus of operative facts' rule be reviewed as it relates to my TCR and claims." Exchange Act Rules 21F-4(d)(1) and 21F-4(d)(2) permit the Commission to treat certain administrative or judicial proceedings as a single Commission action if they "arise out of the same nucleus of operative facts." However, neither rule is applicable here as Claimant 1 is not eligible for an award.

<sup>9</sup> We see no basis to exercise our exemptive authority under Section 36(a) of the Exchange Act here. Section 36(a) grants the Commission the authority in certain circumstances to "exempt any person ... from any provision or provisions of this title or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." However, granting an exemption where the record shows that the whistleblower's information did not lead to the success of a covered action is contrary to the purpose of the whistleblower program, the public interest, and the protection of investors.

Second, the record does not show that Claimant 2's information significantly contributed to the success of the Covered Action or caused Enforcement staff to inquire concerning different conduct as part of the Investigation. Enforcement staff assigned to the Investigation confirm, in a supplemental declaration, which we credit, that the staff did not review or receive any of Claimant 2's information, nor did they communicate with Claimant 2 before or during the Investigation. As stated above, the record also does not show that Claimant 2's information caused Examinations staff responsible for the <sup>Redacted</sup> referral to inquire concerning different conduct.

We have considered Claimant 2's argument that he/she met with certain Commission staff. Staff assigned to the Investigation confirmed in a supplemental declaration that the five Commission staff with whom Claimant 2 met and communicated were not assigned to the Investigation or the Covered Action; in addition, staff assigned to the Investigation did not receive or rely upon any information from the Commission staff cited by Claimant 2 relating to the Investigation or the Covered Action.

For these reasons, Claimant 1 and Claimant 2 are not entitled to an award.<sup>10</sup>

### **III. Conclusion**

Accordingly, it is hereby ORDERED that the whistleblower award applications of Claimant 1 and Claimant 2 in connection with the Covered Action be, and they hereby are, denied.

By the Commission.

J. Lynn Taylor  
Assistant Secretary

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<sup>10</sup> Because Claimant 1 and Claimant 2 are not eligible for an award in the Covered Action, they are also not eligible for any related action award. *See* 15 U.S.C. § 78u-6(b); Exchange Act Rule 21F-3(b), (b)(1); Rule 21F-4(g) and (f); Rule 21F-11(a); *see also* Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 34-86902 (Sept. 9, 2019).