

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
SECURITIES EXCHANGE ACT OF 1934
Release No. 82897 / March 19, 2018
WHISTLEBLOWER AWARD PROCEEDING
File No. 2018-6

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 related to Covered Action Redacted (“Covered Action”). The Preliminary Determination recommended that Redacted Redacted (“Claimant #1”) and Redacted (“Claimant #2”) jointly receive a whistleblower award of ” in the Covered Action identified in the caption above. The Preliminary Determination also recommended that Redacted (“Claimant #3”) receive a whistleblower award of ” in the Covered Action. The Preliminary Determination also recommended that the award application submitted by Redacted (“Claimant #5”) and the award application jointly submitted by Redacted (“Claimant #6”) and Redacted (“Claimant #7”) be denied. Claimants #5, #6, and #7 filed timely responses contesting the Preliminary Determination.¹

For the reasons stated below, we make the following determinations: Claimant #1’s and Claimant #2’s joint award claim is approved in the amount of ” of the monetary sanctions collected, or to be collected, in the Covered Action, for an undivided payout of more than

¹ The Preliminary Determination further recommended that the award applications submitted by two other claimants be denied. Those two claimants failed to submit a response contesting the Preliminary Determination and, therefore, the Preliminary Determination denying their claims for awards have become the final order of the Commission with respect to their award applications.

\$49,000,000;² that Claimant #3’s award claim is approved in the amount of “ of the monetary sanctions collected, or to be collected, in the Covered Action, for a payout of more than \$33,000,000; and that the applications submitted by Claimants #5, #6, and #7 are denied.

I. Background

A. The award program

In 2010, Congress added Section 21F to the Securities Exchange Act of 1934 (the “Exchange Act”). Among other things, Section 21F authorizes the Commission to pay monetary awards—subject to certain limitations, exclusions, and conditions—to individuals who voluntarily provide the Commission with original information about a violation of the securities laws that leads to a successful Commission judicial or administrative action in which the monetary sanctions exceed \$1,000,000.³ The total award amounts paid shall be “not less than 10 percent, in total, of what has been collected of the monetary sanctions” and “not more than 30 percent, in total, of what has been collected[.]”⁴

B. Relevant facts

On ^{Redacted} the Commission instituted ^{Redacted} _{Redacted} the Covered Action in which the respondents named in the action (collectively,

² We have determined to treat Claimants #1 and #2 jointly as a “whistleblower” for purposes of the award determination given that they jointly submitted their Form TCR and Form WB-APP. *See* Exchange Act Section 21F(a)(6) (defining “whistleblower” to mean “2 or more individuals acting jointly who provide[] information relating to a violation of the securities laws to the Commission”). Our proceeding in this way has not impacted the net total award percentage to Claimants #1 and #2. Unless Claimants #1 and #2, within ten (10) calendar days of the issuance of this Order, make a joint request, in writing, for a different allocation of the award between the two of them, the Office of the Whistleblower is directed to pay each of them individually 50% of their joint award.

³ *See* Exchange Act §§ 21F(a) & (b).

⁴ Exchange Act § 21F(b)(1). We note that, in the context of an award proceeding involving two or more meritorious whistleblower claimants, the award must be allocated among the claimants and may never exceed an aggregate percentage amount of 30% of the monetary sanctions collected. *See* Exchange Act Rule 21F-5(c) (explaining that “[i]f the Commission makes awards to more than one whistleblower in connection with the same action or related action,” then “in no event will the total amount awarded to all whistleblowers in the aggregate be ... greater than 30 percent of the amount the Commission or the other authorities collect”).

“Respondents” or “Company”) were ordered to

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Because the monetary sanctions imposed on the Respondents exceeded the statutory threshold for a potential whistleblower award under Section 21F of the Exchange Act, the Office of the Whistleblower (“OWB”) posted Notice of Covered Action ^{Redacted} for the Covered Action.

II. Claimants #1 and #2

We find that Claimants #1 and #2 jointly voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action pursuant to Section 21F(b)(1) of the Exchange Act and Rule 21F-3(a) promulgated thereunder.⁵

Based on our review of the record, including declarations from Commission staff who handled the Covered Action, we find the following events occurred with respect to Claimant #1’s and #2’s jointly submitted information.

On ^{Redacted} staff in the ^{Redacted} Commission’s Division of Enforcement (“Enforcement”) received a specific and detailed whistleblower tip on Form TCR jointly submitted by Claimants #1 and #2, ^{Redacted}

^{Redacted} In their tip, Claimants #1 and #2 provided detailed information concerning the

⁵ 17 C.F.R. § 240.21F-3(a).

Company's alleged violation of
Among other things, the tip detailed

Redacted

Redacted

Based on that tip, Enforcement staff opened an investigation (hereinafter, "First Investigation"). The allegation in Claimant #1's and #2's tip concerning Redacted would become the focus of staff's First Investigation and the cornerstone of Redacted the Commission's subsequent action against the Company. During the First Investigation, Claimants #1 and #2 continued to provide ongoing assistance to the Enforcement staff, including through in-person meetings, conference calls, and supplemental submissions, and provided critical information that advanced the First Investigation, including the identification of potentially relevant documents and key witnesses.

Based on the foregoing contributions that Claimants #1 and #2 made to the Commission's successful pursuit of this Covered Action, and considering the relative joint contributions of Claimants #1 and #2 vis-à-vis the other meritorious whistleblower in this matter, we adopt the Preliminary Determination's recommendation that Claimants #1 and #2 should jointly receive Redacted of the monetary sanctions collected in the Covered Action. In reaching this determination, we have carefully considered the award criteria specified in Exchange Act Rules 21F-5 and 21F-6 as they relate to Claimant #1's and #2's joint contributions to the Covered Action. In particular, we considered the facts that Claimant #1 Redacted

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the information that Claimants #1 and #2 provided to the Commission was significant; and that Claimants #1 and #2 provided continuing and helpful assistance to the Enforcement staff during the First Investigation that saved a substantial amount of time and resources in the First Investigation. We also took into account that Claimants #1 and #2 unreasonably delayed in reporting their information to the Commission.⁶

⁶ We have chosen to reduce the award amount less than we might otherwise have in recognition of the fact that Claimants #1 and #2 Redacted

Claimants #1 and #2 subsequently learned additional facts Redacted and, after learning the additional facts, promptly reported their information to the Commission. However, we also note that Redacted

Our rules seek to incentivize individuals who are "aware of the relevant facts" to promptly report "possible violation[s] of the federal securities laws." Exchange Act Rules 21F-6(b)(2)(i) and 2(a)(1), 17 C.F.R. § 240.21F-6(b)(2)(i) and

III. Claimant #3

We find that Claimant #3 voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action pursuant to Section 21F(b)(1) of the Exchange Act and Rule 21F-3(a) promulgated thereunder.⁷

Based on our review of the record, including declarations from Commission staff who handled the Covered Action, we find the following events occurred with respect to Claimant #3's information. On ^{Redacted} the Enforcement staff responsible for the First Investigation, received a whistleblower tip on Form TCR from Claimant #3, ^{Redacted} According to the tip, ^{Redacted}

The information was previously unknown to the staff handling the investigation that resulted in the Covered Action.

As a result of that tip, the same Enforcement staff on the First Investigation opened a second, separate investigation to investigate the misconduct alleged by Claimant #3 (hereinafter, the "Second Investigation") (the "First Investigation" and "Second Investigation" are referred collectively herein as "the Investigations"). The allegation in Claimant #3's tip concerning ^{Redacted} would become the focus of staff's Second Investigation and the cornerstone of the ^{Redacted} ^{Redacted} in the Commission's subsequent action against the Company.

Based on the foregoing contributions that Claimant #3 made to the Commission's successful pursuit of this Covered Action, and considering the relative contributions of Claimant #3 vis-à-vis the other meritorious whistleblower in this matter, we adopt the Preliminary Determination's recommendation that Claimant #3 should receive ^{Redacted} of the monetary sanctions collected in the Covered Action. In reaching this determination, we have carefully considered the award criteria specified in Exchange Act Rules 21F-5 and 21F-6 as they relate to Claimant #3's contributions to the Covered Action. In particular, we considered the facts that

2(a)(1). We believe it important to recognize, through our discretion to determine an appropriate award percentage, that Claimant #1 and Claimant #2 unreasonably delayed reporting the relevant facts to the Commission for an extended period of time, while acknowledging the mitigating circumstance described above.

⁷ 17 C.F.R. § 240.21F-3(a).

Claimant #3's information was significant and that Claimant #3 provided follow-up assistance to the Enforcement staff.⁸

IV. Claimant #5's Claim Is Denied

A. Preliminary Determination

The CRS preliminarily determined to deny Claimant #5's award claim because Claimant #5's information did not lead 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. None of the information submitted by Claimant #5 caused the Commission to: (i) commence an examination, (ii) open or reopen an investigation, or (iii) inquire into different conduct as part of a current Commission examination or investigation under Rule 21F-4(c)(1) of the Exchange Act; or significantly contributed to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act.

In reaching this preliminary determination, the CRS considered record evidence—including a declaration from an Enforcement staff member assigned to the First and Second Investigations—that revealed that the information provided to the Commission by Claimant #5 did not help advance either investigation, did not affect the charges brought by the Commission in the Covered Action, and was not used in the successful enforcement of the Covered Action.

According to another Enforcement staff declaration, Claimant #5 began submitting whistleblower tips to the Commission in ^{Redacted} (hereinafter referred to as the "9/27 Tip"). The 9/27 Tip was received by staff in the ^{Redacted} Regional Office ^{Redacted} which, after reviewing it, determined not to take further action on the tip and did not forward it to any other region or unit for further action or follow-up.

In ^{Redacted} Claimant #5 submitted another tip through the Commission's on-line portal, which was received by staff on the Investigations in ^{Redacted} After receiving this tip, staff reached out to Claimant #5's counsel. Claimant #5 then sent the 9/27 Tip directly to staff on the Investigations in ^{Redacted}

According to Enforcement staff responsible for the Investigations, Claimant #5 reported very generally and in vague terms various problems at the Company, many of which appeared to be unrelated to the issues staff were investigating. Although Claimant #5 provided some information on ^{Redacted} the information was duplicative of information that staff had already received during the First Investigation, which had been opened several months prior to staff receiving any information from Claimant #5.

⁸ Because of the specificity of the information in Claimant #3's tip, and the credibility that the staff felt that Claimant #3 conveyed during a follow-up call, days later the staff determined that it was necessary to ^{Redacted}

B. Response

Claimant #5's Response makes the following principal contentions.⁹ *First*, Claimant #5 argues that the Commission should adopt a more flexible or lax standard for determining whether a claimant's information led to the success of an enforcement action so as to allow Claimant #5's claim for award in the Covered Action. *Second*, Claimant #5 contends that the 9/27 Tip was the first, on-point tip concerning ^{Redacted} in the Covered Action, even if the relevant staff on the Investigations did not receive the tip until two years later. *Third*, Claimant #5 alleges that Claimant #5 provided multiple ^{Redacted} submissions to the Commission during the ^{Redacted} timeframe that related, at least tangentially, to the misconduct in the Covered Action and that this should provide Claimant #5 a basis for an award in this matter.¹⁰

C. Analysis

We find that, as the record firmly demonstrates, Claimant #5 did not provide information that led to the success of the Covered Action. In reaching this conclusion, we have carefully considered the entire record as it relates to Claimant #5's award application, including the materials that Claimant #5 submitted in response to the Preliminary Determination and the detailed supplemental declaration prepared by an Enforcement staff member from the Investigations ("Supplemental Enforcement Declaration").

As an initial matter, we decline Claimant #5's suggestion that we adopt a more flexible or lax standard for determining whether a claimant's original information "led to" the success of the particular covered action upon which his or her award application is based. That an individual's original information must have "led to" the success of an enforcement action is a critical prerequisite to award eligibility, the standard for which was considered and commented on at length during the adoption of the whistleblower rules.¹¹ Were we to abandon our rules and apply a lower standard for determining when a claimant's information leads to the success of an action, as Claimant #5 would have us do, such relaxation of this critical precondition to award eligibility could undermine the whistleblower program's purpose of incentivizing individuals to come forward with credible intelligence that the agency can leverage in bringing securities law violators to justice and protecting investors from further harm. In this regard, we note that the

⁹ We note that along with the Response, Claimant #5 submitted the correct first page of a tip that Claimant #5 had submitted to the Commission, which Claimant #5 had inadvertently not included when initially submitting the Form WB-APP. For clarification, we note that the first page of that tip has been included as part of the record upon which we make our determination.

¹⁰ Any factual or legal contentions not expressly raised and addressed in Claimant #5's Response are deemed waived.

¹¹ See *Securities Whistleblower Incentives and Protections*, 76 Fed. Reg. 34,000, 34,323-34,327 (June 13, 2011) ("Adopting Release").

“led to” requirement was carefully tailored as part of the Commission’s promulgation of the whistleblower program rules to provide a uniform standard that would apply to all claimants and thus we do not believe that adopting a more relaxed standard for this matter would be appropriate.¹²

Under the whistleblower rules, an individual’s original information leads to the success of an action where it causes staff to (i) commence an examination, (ii) open or reopen an investigation, or (iii) inquire into different conduct as part of a current Commission examination or investigation under Rule 21F-4(c)(1) of the Exchange Act; or alternatively, where in the context of an existing investigation, the individual’s original information significantly contributes to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act. In determining whether an individual’s information significantly contributed to an action, we consider factors such as whether the information allowed us to bring: the action in significantly less time or with significantly fewer resources; additional successful claims; or successful claims against additional individuals or entities.¹³ The individual’s information must have been “meaningful” in that it “made a substantial and important contribution” to the success of the covered action.¹⁴

As discussed below, Claimant #5’s information does not satisfy either prong of the “led to” requirement, as the information did not cause the relevant Enforcement staff to open the Investigations, and it did not significantly contribute to the success of the Covered Action.

¹² To the extent that Claimant #5 is requesting that we waive the “led to” requirement here, we decline to do so. First, we have never waived the requirement that a claimant’s tip must satisfy the “led to” requirement as provided for in the Commission’s whistleblower rules. Second, even if we might waive that requirement in some future matter, we would not do so here as we find that a waiver would not be in the public interest—a critical prerequisite for a waiver under Section 36(a) of the Exchange Act. Based on our review, the information in the 9/27 Tip generally did not relate to the specific violations that comprised the Covered Action, which alone defeats any contention that a waiver would be in the public interest in our view. Finally, to the extent that the Claimant has identified other award matters where we have waived a substantive requirement to permit an applicant to obtain an award, we note that these other matters involved either the application of our rules to events that predated the adoption of our rules (which is not the case here) or the unusual factual situations presented by those matters were simply not contemplated by the Commission in crafting the whistleblower rules *and* the Commission found that a strict application of the rules in those specific instances would be contrary to the public interest and the broader purposes of the whistleblower program (which is not the case here).

¹³ See Adopting Release, 76 Fed. Reg. at 34,325.

¹⁴ Release No. 77833, Whistleblower Award Proceeding File No. 2016-9 (May 13, 2016).

1. 9/27 Tip

Contrary to Claimant #5's assertions, the 9/27 Tip, which the relevant investigative staff received approximately two years later in [Redacted] was not on-point or directly related to the [Redacted].¹⁵ As discussed above, [Redacted]

[Redacted] Unlike Claimant #3's [Redacted] Claimant #5's 9/27 Tip says nothing about [Redacted]. To the contrary, the 9/27 Tip alleged a different type of misconduct by an affiliate of the Company, which was not a part of the Commission's findings in the Covered Action. The 9/27 Tip, on its face, was not relevant to the charges the Commission ultimately filed against the Company.

Based on the supplemental declaration prepared by an Enforcement staff member assigned to the First and Second Investigations, we find that it was not until [Redacted] when Enforcement staff received the whistleblower tip from Claimant #3, that they learned of the misconduct concerning [Redacted] the tip from Claimant #3 led the staff to open the Second Investigation.¹⁶ Furthermore, after opening the Second Investigation, there was nothing in the 9/27 Tip that staff used in connection with the Second Investigation or affected the subsequent charges brought by the Commission, including with respect to [Redacted]

To be clear, Claimant #5 is not being denied an award because, as Claimant #5 suggests, the Commission failed to properly triage the 9/27 Tip. To the contrary, that tip was reviewed by two separate Enforcement teams, including the relevant Enforcement staff on the Investigations. Had the 9/27 Tip concerned the misconduct that Claimant #3 later detailed in Claimant's #3's tip, the relevant Enforcement staff may have opened the Second Investigation after receiving Claimant #5's 9/27 Tip in [Redacted]. That the relevant staff received Claimant #5's 9/27 Tip prior to receiving information from Claimant #3 underscores the fact that the 9/27 Tip was not on-point or directly related to [Redacted]

2. Supplemental Submissions

Claimant #5 then argues that Claimant #5 made multiple submissions to the relevant Enforcement staff during the [Redacted] time period, and that the initial Enforcement staff

¹⁵ [Redacted] Claimant #5 does not argue in the Response that the 9/27 Tip related to [Redacted] Claimant #5's contentions with respect to the 9/27 Tip concerns only [Redacted] charged in the Covered Action. Thus, we find that Claimant #5 has waived any contention that the 9/27 tip led to the success of [Redacted]

¹⁶ The supplemental declaration prepared by the Enforcement staff member addresses certain factual matters raised by Claimant #5's Response to the Preliminary Determination.

declaration does not fully address the “14 detailed zones of information” supplied by Claimant #5 in those submissions.

Based on the supplemental declaration provided by Enforcement staff, we find that the information provided by Claimant #5 in ^{Redacted} neither caused staff to open the Investigations nor significantly contributed to the success of the Covered Action. None of those supplemental submissions advanced the Investigations or the resulting charges in the Commission’s Order. None of those submissions concerned the misconduct that became the cornerstone of ^{Redacted}. None of those submissions contained new information concerning the misconduct that staff were investigating in connection with the First Investigation. None of the information provided by Claimant #5 helped staff build a stronger case, bring additional charges, bring charges against additional wrongdoers, or allowed staff to save time and resources. None of Claimant #5’s information helped staff negotiate a more favorable settlement, and none of the information was used in the Commission’s Order. That Claimant #5 provided information alleging general or other kinds of purported misconduct by the Company does not make Claimant #5 eligible for an award with respect to this particular Covered Action.¹⁷

Accordingly, we find that the information provided by Claimant #5 in either the 9/27 Tip or the supplemental submissions did not help initiate or advance the Investigations, nor was the information in the submissions used in the successful enforcement of the Covered Action.

V. Claimants #6’s and #7’s Claim is Denied

A. CRS Preliminary Denial

The CRS preliminarily determined to deny Claimants #6 and #7’s joint award claim because their information did not lead to the successful enforcement of the Covered Action. In doing so, the CRS relied on record evidence that demonstrated that Enforcement staff on the Investigations received no information from Claimants #6 and #7 during the course of the Investigations and had no communications with them.

B. Claimants #6’s and #7’s Response

In the response, Claimants #6 and #7 contend that they made multiple submissions over the course of several years that were not directed at specific or individual violations, but instead related more broadly to enforcement opportunities that covered a wide variety of illegal activity. In their Response, Claimants #6 and #7 specifically identify eleven of their submissions they believe to be most relevant.

¹⁷ The record reflects that not only did Enforcement staff follow-up on Claimant #5’s allegations of different Company misconduct, but also that staff opened a new and separate investigation to test Claimant #5’s allegations and found insufficient evidence to support them.

In addition to filing a tip pursuant to the procedures specified in Exchange Act Rule 21F-9, Claimants #6 and #7 contend that they sent numerous submissions directly to the head of a specialty unit within the Division of Enforcement and met with the staff of that unit. It was their understanding that the staff would funnel their information throughout the Commission as appropriate.¹⁸

C. Analysis

As an initial matter, we observe that Claimants #6 and #7 do not dispute in their Response that their information was never directly or indirectly provided to the staff handling the Investigations, or reviewed or used by those staff members in the course of the Investigations or otherwise. Indeed, Claimants #6 and #7 at no point dispute (either through argument or evidence) the finding in the Preliminary Determination that their information did not lead to the success of the Covered Action. Based on the foregoing, we find that Claimants #6 and #7 have thus waived any challenge to that preliminary finding and deny their joint award application on this ground.

We also deny their application on the separate ground that, as the record demonstrates, their information did not lead to the success of the Covered Action. Based on the declarations from an Enforcement staff member assigned to the First and Second Investigations, we find that staff on the Investigations never received any information directly from Claimants #6 and #7 or had any communications with them, nor did staff on the Investigations indirectly receive information from Claimants #6 and #7 through the specialty unit staff to which Claimants #6 and #7 had provided their information.¹⁹ Furthermore, the eleven submissions identified by Claimants #6 and #7 in their Response do not appear to facially relate to the misconduct that was the focus of the Investigations or the findings made by the Commission in the Covered Action.

To be eligible for a whistleblower award, a claimant's information must have led to the success of the underlying Covered Action. As staff on the Investigations did not receive any information directly or indirectly from Claimants #6 and #7, and their information does not appear to relate to the specific misconduct that was at issue in this matter, Claimants #6's and

¹⁸ In ^{Redacted} staff in this specialized unit opened an investigation based on the information submitted by Claimants #6 and #7. However, in ^{Redacted} the staff closed that investigation after deciding not to recommend that the Commission pursue an enforcement action. The staff determined that the allegations were unfounded.

¹⁹ The Enforcement staff member submitted two declarations. The first declaration was prepared at the preliminary-determination stage and a second declaration was prepared to address certain matters that Claimants #5, #6 and #7 raised in response to the Preliminary Determination.

#7's information did not cause staff to open the Investigations, nor did it significantly contribute to the success of the Covered Action.²⁰

VI. Conclusion

Accordingly, it is ORDERED that Claimants #1 and #2 shall jointly receive an undivided award of ^{Redacted} percent (^{Redacted}) of the monetary sanctions collected, or to be collected, in the Covered Action.

ORDERED that Claimant #3 receive an award of ^{Redacted} percent (^{Redacted}) of the monetary sanctions collected, or to be collected, in the Covered Action.

ORDERED that Claimant #5's, Claimant #6's, and Claimant #7's whistleblower award claims be denied because the record demonstrates that Claimant #5, Claimant #6, and Claimant #7 did not provide original information that led to the successful enforcement of the Covered Action and they have not shown otherwise in their requests for reconsideration of the Preliminary Determination.

By the Commission.

Brent J. Fields

Secretary

²⁰ In their Response to the Preliminary Determination, Claimants #6 and #7 cite to TCR ^{Redacted} (which corresponds with a Form TCR that they submitted in ^{Redacted}), as well as 11 other submissions. They did not attach the 11 submissions to their Response. We note that the administrative record includes all of the supplemental submissions made under TCR ^{Redacted} as well as 10 of the 11 other submissions that Claimants #6 and #7 specifically identified in their Response. However, the record does not include one of the 11 submissions that the Claimants identify (purportedly entitled ^{Redacted}) because we have been unable to locate that item internally and have no record of having ever received it, nor (as noted above) did the Claimants submit it to us as part of their Response. We note that the absence of this item from the record has no bearing on our decision to deny Claimants #6 and #7 an award because, as explained in a declaration submitted by an Enforcement staff member involved with the Covered Action, *nothing* that the Claimants provided to the Commission was received by the Covered Action staff (either directly from the Claimants or indirectly through the specialty unit staff to which Claimants #6 and #7 had provided their information).