

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 95221 / July 8, 2022

WHISTLEBLOWER AWARD PROCEEDING

File No. 2022-61

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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 CLAIM**

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending the denial of the whistleblower award claim submitted by Redacted (“Claimant”) in connection with the above-referenced covered action (the “Covered Action”). Claimant filed a timely response contesting the preliminary denial. For the reasons discussed below, Claimant’s award claim is denied.

**I. Background**

**A. The Covered Action**

On Redacted, the Commission filed an emergency action against Redacted (the “Defendants”). Redacted The Commission alleged that the Defendants, Redacted engaged in a Redacted scheme Redacted of Redacted (the “Company”) Redacted The Commission charged the Defendants with violating Redacted

Redacted on Redacted the court entered final judgment against the Defendants and enjoined them from future violations of the securities laws. The court also ordered the Defendants to pay disgorgement, prejudgment interest, and a civil penalty totaling Redacted

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. Claimant filed a timely whistleblower award claim.

## **B. The Preliminary Determination**

On <sup>Redacted</sup> the CRS issued a Preliminary Determination recommending that Claimant’s claim be denied on the grounds that, prior to <sup>Redacted</sup> Claimant was not a “whistleblower” pursuant to Exchange Act Rule 21F-2(a). To qualify as a whistleblower in connection with a particular submission of information to the Commission, an individual must provide that information to the Commission in accordance with the procedures set forth in Rule 21F-9(a).<sup>1</sup> Rule 21F-9(a) requires a whistleblower to submit information through the Commission’s online Tips, Complaint, or Referral (“TCR”) portal, or by mailing or faxing a Form TCR to the Commission’s Office of the Whistleblower. Claimant’s whistleblower application stated that Claimant submitted information to the Commission by email on or about <sup>Redacted</sup> but Claimant did not cite to any specific TCR submission. The CRS concluded that Claimant did not submit any information pursuant to these procedures until <sup>Redacted</sup>

The CRS also concluded that Claimant did not qualify for an award because Claimant did not provide information to the Commission that led to the successful enforcement of the Covered Action. The CRS concluded that none of the information submitted by Claimant either (1) caused 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 contributed to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act. The record demonstrated that Enforcement staff opened the investigation that led to the Covered Action (the “Investigation”) on <sup>Redacted</sup> based upon a source other than the Claimant, that Claimant submitted his/her Form TCR almost three years after the Investigation was opened, and that staff responsible for the Investigation confirmed that Claimant’s information was not used in the Investigation or the resulting litigated enforcement action in any way.<sup>2</sup>

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

Claimant submitted a timely written response (the “Response”) contesting the Preliminary Determination.<sup>3</sup> Claimant principally argues that Claimant submitted three TCRs to the Commission “with considerable detail on [the Company]” that Claimant believes pre-dated

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<sup>1</sup> Exchange Act Rule 21F-9(a), 17 C.F.R. § 240.21F-9(a).

<sup>2</sup> While not a basis for its recommendation, the CRS also noted that the information provided by Claimant was in the form of links to publicly-available websites and would likely not, standing alone, constitute “original information” as required by Exchange Act Rule 21F-4(b).

<sup>3</sup> See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

the beginning of the Investigation. Claimant also points to an <sup>Redacted</sup> email that Claimant sent to Commission staff with a link to a publicly-available news article with which Claimant claims to have assisted, asserting that if the Investigation began after that date and/or was opened in part based on the article, Claimant should receive a whistleblower award. Finally, Claimant submitted copies of certain emails he/she sent to SEC staff about the Defendants and/or the Company as evidence of his/her assistance to the Investigation. Claimant did not offer any response on the issue of his/her failure to follow Rule 21F-9.

## II. Analysis

To qualify for an award under Section 21F of the Exchange Act, an individual must, among other things, submit information to the Commission through the Commission's website using the TCR portal or submit information by mailing or faxing a Form TCR to the Office of the Whistleblower.<sup>4</sup> The individual must also declare under penalty of perjury that the information submitted is true and correct to the best of the individual's knowledge.<sup>5</sup>

An individual seeking an award must also voluntarily provide the Commission with original information that leads to the successful enforcement of a covered action.<sup>6</sup> Among other things, claimant's original information will be deemed to lead to a successful enforcement 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>7</sup> or (ii) the conduct was already under examination or investigation, and the original information "significantly contributed to the success of the action."<sup>8</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>9</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>10</sup>

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<sup>4</sup> Exchange Act Rule 21F-9(a); 17 C.F.R. § 240.21F-9(a).

<sup>5</sup> Exchange Act Rule 21F-9(b); 17 C.F.R. § 240.21F-9(b).

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

<sup>7</sup> See Exchange Act Rule 21F-4(c)(1); 17 C.F.R. § 240.21F-4(c)(1).

<sup>8</sup> See Exchange Act Rule 21-F-4(c)(2), 17 C.F.R § 240.21F-4(c)(2).

<sup>9</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>10</sup> Exchange Act Rel. No. 85412 at 8-9.

For the reasons discussed below, Claimant's information does not merit a whistleblower award in the Covered Action.

First, Claimant contends for the first time in the Response that he/she submitted information about the Company in three TCR submissions prior to the beginning of the Investigation, implicitly arguing that Claimant's information in part caused Enforcement staff to open the Investigation. Those three submissions were made in <sup>Redacted</sup> and <sup>Redacted</sup> <sup>Redacted</sup><sup>11</sup> However, staff assigned to the Investigation confirmed that the Investigation was opened on or about <sup>Redacted</sup> more than one year before the earliest of Claimant's three submissions. Because these submissions were made after Enforcement staff began the Investigation, Claimant's information could not have caused the opening of the Investigation. Claimant's contention that his/her <sup>Redacted</sup> email to Enforcement staff played some part in opening the Investigation fails for the same reason: at that point, the Investigation had already been open for almost one month.<sup>12</sup> Claimant's contention that the copies of emails to the staff constituted proof of Claimant's contribution is also unavailing. Although the emails Claimant attached to the Response contained a few references to Defendants and/or the Company, all such emails were sent after <sup>Redacted</sup> when the Covered Action was filed.

Second, because the evidence does not establish that Claimant's information caused the staff to open the Investigation, Claimant's information can only be deemed to have led to the success of the Covered Action if it caused the staff to inquire concerning different conduct as part of a current investigation<sup>13</sup> or "significantly contributed to the success of the action."<sup>14</sup> Claimant's information meets neither criterion. Staff assigned to the Investigation confirmed that they never relied upon or used any information provided by Claimant and that Claimant's information did not cause the staff to inquire into different conduct or otherwise contribute to the Investigation. In addition, Commission records demonstrate that Claimant's three TCR submissions highlighted in Claimant's Response were either (1) forwarded to Enforcement staff assigned to other investigations, not to staff responsible for the Investigation, or (2) closed with a disposition of "No Further Action" and not forwarded to Enforcement staff responsible for the Investigation. Moreover, the above-mentioned emails that were attached to Claimant's Response were all sent to the staff after the Covered Action was already filed. We find that Claimant's

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<sup>11</sup> Although Claimant did not specify the date or submission number of the three submissions in Claimant's Response, based upon Claimant's descriptions of their contents, OWB staff were able to locate the three corresponding submissions.

<sup>12</sup> In addition, Claimant's <sup>Redacted</sup> email to Enforcement staff was not sent to the Commission pursuant to the procedures required by Rule 21F-9(a) and for this separate reason cannot form the basis for a whistleblower award. While Rule 21F-9(e) applies to pending claims such as the one at issue here, a waiver of these procedural requirements is not available under this rule because the Commission cannot "readily develop an administrative record that unambiguously demonstrates that [Claimant] would otherwise qualify for an award." Rule 21F-9(e)(2).

<sup>13</sup> Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

<sup>14</sup> Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

information did not cause the staff to look into different conduct as part of its ongoing investigation, nor did Claimant's information significantly contribute to the investigation.<sup>15</sup>

Lastly, Claimant's Response did not contest the CRS's recommendation that Claimant's claim be denied on the additional ground that Claimant did not follow the procedures set forth in Rule 21F-9. By failing to timely present any argument to the Commission during the reconsideration stage as to this ground for denial, Claimant has forfeited the opportunity to contest this ground for denial.<sup>16</sup>

Therefore, Claimant's information does not qualify Claimant for a whistleblower award.

### **III. Conclusion**

Accordingly, it is hereby ORDERED that the whistleblower award application of Claimant in connection the Covered Action be, and it hereby is, denied.

By the Commission.

Jill M. Peterson  
Assistant Secretary

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<sup>15</sup> To the extent that Claimant argues his/her <sup>Redacted</sup> email and the news article therein contributed to the success of the investigation, this argument also fails. First, Enforcement staff stated that no information provided by Claimant was used by the staff. Second, there is no evidence in the record indicating that the staff relied upon that article independently of Claimant's email, nor does Claimant provide satisfactory evidence that Claimant is the original source of any information in the article. *See* Rule 21F-4(b)(5).

<sup>16</sup> *Cf.* Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f) ("Your failure to submit a timely response contesting a Preliminary Determination will constitute a failure to exhaust administrative remedies, and you will be prohibited from pursuing an appeal pursuant to § 240.21F-13 of this chapter.").