

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 97015 / March 2, 2023

WHISTLEBLOWER AWARD PROCEEDING

File No. 2023-40

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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 instituted settled administrative and cease-and-desist proceedings in the Covered Action, charging Redacted

Redacted (collectively, the “Respondents”) with violations of the federal securities laws. The Commission alleged that Redacted (collectively, the “Individuals”)

Redacted The Commission also alleged that the Individuals Redacted

Redacted The Respondents were ordered to pay, jointly and severally, disgorgement of Redacted plus a civil monetary penalty of Redacted prejudgment interest of 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 because Claimant did not provide information that led to the successful enforcement of the Covered Action within the meaning of Section 21F(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rules 21F-3(a)(3) and 21F-4(c) thereunder. The CRS preliminarily determined that Claimant’s 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 noted that the investigation which led to the Covered Action (the “Investigation”) was opened before Claimant submitted his/her tip to the Commission, and the CRS also stated that none of the information provided by Claimant contributed to or was otherwise used in the Investigation because it was duplicative of information already received by Enforcement staff.

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

Claimant submitted a timely written response (the “Response”) contesting the Preliminary Determination.<sup>1</sup> Among other things, Claimant principally argues that he/she provided information to <sup>Redacted</sup> (the “Firm”) which helped the Firm secure judgments against several individuals allegedly involved in the misconduct at issue in the Covered Action. Claimant also argues that he/she provided information to the Commission in his/her whistleblower award application about other misconduct, but that the staff never sought additional information from him/her in response. Lastly, Claimant states that he/she communicated with Enforcement staff after the settled Covered Action was instituted and provided “substantial information” about “more serious misconduct[ ]” involving a larger fraudulent scheme than was charged by the Commission. Claimant also stated that he/she submitted an additional TCR in <sup>Redacted</sup> over fifteen months after the Covered Action was instituted. Claimant also asks the Commission should consider that Claimant suffered hardship during the time he/she provided information to the Commission.

## **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>2</sup> As relevant here, under Exchange Act Rules 21F-4(c)(1) and

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

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

(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>

Claimant does not qualify for an award. First, the record demonstrates that the Investigation was opened based upon a self-report in <sup>Redacted</sup> approximately two months before Claimant submitted his/her TCR. Accordingly, Claimant’s information did not cause the staff to open the Investigation.

Second, the record shows that Claimant’s information did not significantly contribute to the success of the Covered Action or cause the staff to inquire into different conduct as part of a current investigation. Claimant submitted his/her initial tip to the Commission approximately two months after the Investigation began. By this time, the staff had already gathered information from other sources, including from the self-report and Claimant’s information was duplicative of what the staff already knew. In addition, a former supervisory attorney confirms, in a supplemental declaration, which we credit, that the Commission was not a party to the actions brought by the Firm, and any information Claimant provided to the Firm did not advance the Investigation. The supplemental declaration also confirms that Claimant’s communications with the staff after the filing of the Covered Action did not advance the Investigation or contribute to the charges in the Covered Action. Similarly, Claimant’s <sup>Redacted</sup> TCR did not contribute to the Investigation or the charges in the Covered Action because the Commission had already brought the settled Covered Action over a year earlier. Accordingly, Claimant’s information did not significantly contribute to the Investigation or cause staff to inquire into different conduct.

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<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.

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

For these reasons, Claimant is not entitled to an award.<sup>7</sup>

### III. Conclusion

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

By the Commission.

Vanessa A. Countryman  
Secretary

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<sup>7</sup> Claimant's Response also argues that he/she provided information about other misconduct which the Commission allegedly did not investigate. Any such alleged misconduct and the staff's decision whether to investigate the allegations, however, are not relevant to this whistleblower award proceeding, which addresses whether Claimant 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). In addition, Claimant also argues that the Commission should deny any whistleblower award to insiders at the Respondents. This argument is moot, as Claimant is the only applicant for an award in connection with this Covered Action. Further, Claimant's argument that we consider the hardships he/she encountered do not warrant the granting of an award. While we may consider "any unique hardships experienced by the whistleblower as a result of his or her reporting," such consideration does not apply to whether a claimant is eligible for an award, but instead to the amount of an award after a claimant has met all of the award eligibility criteria. *See* Rule 21F-6(b)(2)(vi). As discussed above, Claimant has not met the eligibility criteria for an award. Accordingly, we need not consider Claimant's argument regarding any hardships.