

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 91568 / April 15, 2021

WHISTLEBLOWER AWARD PROCEEDING  
File No. 2021-39

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In the Matter of the Claims 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 a Preliminary Determination recommending that claimants <sup>Redacted</sup> (“Claimant 1”) and <sup>Redacted</sup> (“Claimant 2”) jointly<sup>1</sup> receive a whistleblower award in the amount of <sup>Redacted</sup> percent ( % ) of the monetary sanctions collected in the above-referenced Covered Action (“Covered Action”) for a payout of over \$50 million, and that the award application submitted by <sup>Redacted</sup> (“Claimant 3”) be denied.<sup>2</sup> Claimant

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<sup>1</sup> 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 tip through the same counsel and provided substantively identical whistleblower award applications. *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.

<sup>2</sup> The CRS also preliminarily determined to recommend that Claimant 1 and Claimant 2’s related action award claims be denied. Because Claimant 1 and Claimant 2 did not contest the preliminary denial of the related action award claims, that preliminary denial is now deemed to be the Final Order of the Commission pursuant to Exchange Act Rule 21F-11(f), 17 C.F.R. §

1 and Claimant 2 provided written notice of their decision not to contest the Preliminary Determination and Claimant 3 submitted a timely notice contesting the preliminary denial of Claimant 3's award claim. For the reasons discussed below, the CRS's recommendations are adopted.<sup>3</sup>

## I. Background

### A. The Covered Action

On <sup>Redacted</sup> the Commission instituted a settled administrative and cease-and-desist proceeding, <sup>Redacted</sup> <sup>Redacted</sup>

### B. The Preliminary Determination

The CRS issued a Preliminary Determination<sup>5</sup> recommending that (1) Claimant 1 and Claimant 2 jointly receive an award of % of the monetary sanctions collected in the Covered Action; and (2) the award claim of Claimant 3 be denied because Claimant 3 did not provide original information that "led to" the success of the Covered Action as required under Exchange Act Rule 21F-4(c). Specifically, Enforcement staff responsible for the Covered Action received no information from, nor had any communication with, Claimant 3 prior to the filing of the Covered Action.

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240.21F-11(f).

<sup>3</sup> The CRS also preliminarily determined to recommend denying the award claim of an additional claimant, who did not file a written response. Accordingly, the preliminary denial of that award claim has become the Final Order of the Commission pursuant to Exchange Act Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f).

Redacted

<sup>5</sup> See Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d).

### C. Claimant 3's Response to the Preliminary Determination

Claimant 3 submitted a timely written response contesting the Preliminary Determination (“Response”).<sup>6</sup> In the Response, Claimant 3 makes the following primary principle arguments and assertions. *First*, Claimant 3 claims that Claimant 3 began submitting relevant information to the Commission beginning in <sup>Redacted</sup> including information received by Commission staff in the <sup>Redacted</sup> (“Other Regional Office”), and that the information was submitted close in time to when the investigation opened. *Second*, Claimant 3 asserts that Claimant 3 submitted information to various federal agencies and other authorities which the Commission received. *Third*, Claimant 3 surmises that if the responsible investigative staff did not receive Claimant 3’s information, it must have been lost, in violation of agency policies.

## II. Analysis

### A. Claimant 1 and Claimant 2

The record demonstrates that Claimant 1 and Claimant 2 voluntarily provided original information to the Commission that led to the success of the Covered Action.<sup>7</sup> The record reflects that (1) Claimant 1 and Claimant 2 alerted Commission staff to the potential violations, prompting Commission staff to open an investigation; (2) Claimant 1 and Claimant 2 met with Commission staff on numerous occasions, provided voluminous detailed documents, and provided ongoing assistance throughout the investigation; (3) Claimant 1 and Claimant 2’s information and assistance was critical to staff’s ability to identify and investigate the unlawful securities violations and resulting Covered Action; (4) the unlawful conduct identified by Claimant 1 and Claimant 2 involved highly complex transactions and would have been difficult to detect in the absence of their information; and (5) the information provided by Claimant 1 and Claimant 2 resulted in the return of tens of millions of dollars to harmed investors.

### B. Claimant 3

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 judicial or administrative action.<sup>8</sup> As relevant here, original information “leads to” a successful enforcement action if either: (i) the original information caused the staff to open an investigation, reopen an investigation, or inquire into 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; or (ii) the conduct

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<sup>6</sup> See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

<sup>7</sup> See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1); Exchange Act Rule 21F-3(a), 17 C.F.R. § 240.21F-3(a).

<sup>8</sup> 15 U.S.C. § 78u-6(b)(1).

was already under examination or investigation, and the original information significantly contributed to the success of the action.<sup>9</sup>

Notwithstanding Claimant 3's assertion that Claimant 3's information should have led to an investigation, the record in this matter conclusively demonstrates that none of the tips that Claimant 3 submitted to the Commission were provided to the investigative staff responsible for the Covered Action. Investigative staff provided a supplemental declaration, which we credit, addressing the principal arguments in Claimant's response. *First*, the record clearly shows that the investigation was opened in <sup>Redacted</sup> based on information provided by Claimants 1 and 2. As such, Claimant 3's claim that the investigation was opened in <sup>Redacted</sup> based on a self-report by the Company and close in time to Claimant 3's tips, submitted in late <sup>Redacted</sup> and early <sup>Redacted</sup> is factually incorrect. *Second*, the tips that Claimant 3 cites to in Claimant 3's award application were reviewed by staff in the Other Regional Office and were each closed with a disposition of "No Further Action," ("NFA"), and were not forwarded to Enforcement staff in connection with any Commission investigation.<sup>10</sup> As such, contrary to Claimant 3's speculation, Claimant's information was not "lost" or otherwise ignored. *Third*, Enforcement staff responsible for the Covered Action investigation confirmed that they did not receive or otherwise learn of any information that Claimant 3 may have provided to other federal agencies or authorities. *Finally*, the information that Claimant 3 submitted to the Commission did not relate to the Company's <sup>Redacted</sup> the subject of the Covered Action.

As a result, Claimant 3 does not satisfy Rule 21F-4(c)(1), because Enforcement staff opened the Covered Action investigation based on the information provided by Claimant 1 and Claimant 2, and not Claimant 3. Nor does Claimant 3 satisfy Rule 21F-4(c)(2) because Enforcement staff responsible for the Covered Action received no information from Claimant 3, nor had any communications with Claimant 3 prior to the filing of the Covered Action. In short, Claimant 3 provided no information that contributed to the success of the Covered Action.<sup>11</sup>

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<sup>9</sup> Exchange Act Rule 21F-4(c)(1)-(2), 17 C.F.R. § 240.21F-4(c)(1)-(2).

<sup>10</sup> In addition to the TCRs cited in Claimant 3's award application, Claimant 3 has submitted other TCRs to the Commission, as well as supplemental information and documents uploaded as additional information to Claimant 3's TCRs. All of Claimant 3's TCRs were closed with an NFA disposition and not forwarded to Covered Action investigative staff. Nor did any of the supplemental submissions uploaded as additional information under Claimant 3's TCRs alter the original NFA disposition.

<sup>11</sup> Because Claimant 3 is not eligible for an award in an SEC Covered Action, Claimant 3 also would not be eligible for an award in any related action. *See* Order Determining Whistleblower Award Claims, Release No. 34-84506, at \*8 n.5 (Oct. 30, 2018).

### **III. Conclusion**

Accordingly, it is ORDERED that Claimant 1 and Claimant 2 shall receive a joint award of <sup>Redacted</sup> percent ( % ) of the monetary sanctions collected in the Covered Action and that Claimant 3's award application should be denied.

By the Commission.

Vanessa A. Countryman  
Secretary