

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 96705 / January 19, 2023

WHISTLEBLOWER AWARD PROCEEDING

File No. 2023-30

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In the Matter of the Claims for an Award

in connection with

Redacted

Redacted

Notice of Covered Action Redacted

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS**

The Claims Review Staff (“CRS”) issued Preliminary Determinations recommending that <sup>Redacted</sup> (“Claimant 1”) receive a whistleblower award equal to <sup>Redacted</sup> percent (<sup>\*\*\*</sup> %) of the monetary sanctions collected or to be collected in the above-referenced Covered Action (the “Covered Action”), that <sup>Redacted</sup> (“Claimant 2”) receive a whistleblower award equal to <sup>\*\*\*</sup> percent (<sup>\*\*</sup> %) of the monetary sanctions collected or to be collected in the above-referenced Covered Action, and that <sup>Redacted</sup> (“Claimant 3”) receive a whistleblower award equal to <sup>\*\*\*</sup> percent (<sup>\*\*</sup> %) of the monetary sanctions collected or to be collected in the above-referenced Covered Action. Based on anticipated distributions to harmed investors by the court-appointed receiver in the Covered Action, we expect that the awards in this matter will total around \$18 million. The CRS also preliminarily recommended that the award claim of <sup>Redacted</sup> (“Claimant 4”) should be denied.<sup>1</sup> Claimant 1 provided written notice of his/her decision not to contest the Preliminary Determinations and Claimants 2, 3, and 4 filed timely responses contesting the Preliminary Determinations. After reviewing the arguments of Claimants 2, 3,

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<sup>1</sup> The CRS also recommended the denial of the award application of one other claimant, who did not contest the Preliminary Determinations. Accordingly, the Preliminary Determinations with respect to that award claim became the Final Order of the Commission through operation of Exchange Act Rule 21F-10(f), 17 C.F.R. §240.21F-10(f).

and 4 and the additional staff declaration, which we credit, the CRS confirmed its original recommendations. For the reasons discussed below, the CRS’s recommendations are adopted with respect to Claimant 1, Claimant 2, Claimant 3, and Claimant 4.

## I. Background

### A. The Covered Action

On <sup>Redacted</sup> the Commission filed <sup>Redacted</sup>

<sup>Redacted</sup> According to the complaint, <sup>Redacted</sup>

<sup>Redacted</sup> The complaint also alleged that <sup>Redacted</sup>

<sup>Redacted</sup> The complaint alleged that <sup>Redacted</sup>

<sup>Redacted</sup> The SEC alleged <sup>Redacted</sup>

<sup>Redacted</sup> the Commission obtained a final judgment as <sup>Redacted</sup>

obtained a separate final judgment as to <sup>Redacted</sup> the Commission

According to the court’s order, the entity defendants’ obligation to pay disgorgement and prejudgment interest would be satisfied by the amounts collected by the court-appointed receiver to be set forth in the receiver’s final report and accounting to the court. To date, the receiver has recovered <sup>Redacted</sup>

On <sup>Redacted</sup> the Office of the Whistleblower (“OWB”) posted the above-referenced Notice of Covered Action on the Commission’s website, inviting claimants to submit

whistleblower award applications within 90 days.<sup>2</sup> Claimants 1, 2, 3, and 4 filed timely whistleblower claims.

## **B. The Preliminary Determinations**

On <sup>Redacted</sup> the CRS issued Preliminary Determinations<sup>3</sup> recommending that the Commission find that Claimants 1, 2 and 3 voluntarily provided original information to the Commission that led to the successful enforcement of the referenced Covered Action pursuant to Section 21F(b)(1) of the Exchange Act and Rule 21F-3(a) promulgated thereunder and that: (1) Claimant 1 receive an award of <sup>\*\*\*</sup>% of the monetary sanctions collected or to be collected in the Covered Action; (2) Claimant 2 receive an award of <sup>\*\*</sup>% of the monetary sanctions collected or to be collected in the Covered Action; and (3) Claimant 3 receive an award of <sup>\*\*</sup>% of the monetary sanctions collected or to be collected in the Covered Action. The CRS further preliminarily determined to recommend that the award claim of Claimant 4 be denied because Claimant 4 did not provide original information that “led to” the success of the Covered Action as required under Exchange Act Rule 21F-4(c). The CRS also preliminarily determined that Claimant 4 is not eligible for the automatic waiver under Exchange Act Rule 21F-9(e) in connection with Claimant 4’s failure to submit information in the form and manner required under Exchange Act Rules 21F-9(a) and (b).

## **C. Claimants 2, 3, and 4’s Responses to the Preliminary Determinations**

Claimant 2 submitted a timely written response contesting the Preliminary Determinations.<sup>4</sup> Specifically, Claimant 2 contends that he/she submitted a TCR earlier than the date stated in the initial staff declaration, and therefore, his/her submission was prior to the staff’s opening of the investigation and obtaining of the formal order of investigation. Based on the claim of an earlier date of submission, Claimant 2 argues that his/her information played a role in the investigation opening and as a result, he/she should receive a higher award percentage.<sup>5</sup> Claimant 2 also argues that the CRS failed to explain how his/her information was “duplicative” of information provided by Claimant 1.

Claimant 3 submitted a timely written response contesting the Preliminary Determinations.<sup>6</sup> Specifically, Claimant 3 argues that Claimant 3 should receive a higher award because he/she provided new information that was central to the Covered Action and that without his/her information, the Commission would have been unable to prove its claims.

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<sup>2</sup> See Exchange Act Rule 21F-10(a), 17 C.F.R. §240.21F-10(a).

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

<sup>4</sup> See Exchange Act Rule 21F-10(e), 17 C.F.R. §240.21F-10(e).

<sup>5</sup> Claimant 2 also argues in his/her response that he/she should not receive a lower award percentage due to any reporting delay. However, the CRS did not recommend any decrease in Claimant 2’s award due to unreasonable reporting delay.

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

Claimant 3 also argues that the vast scope of information he/she provided was critical to the staff's investigation. Therefore, Claimant 3 argues that a higher award percentage is appropriate.

Claimant 4 submitted a timely written response contesting the Preliminary Determinations.<sup>7</sup> Claimant 4 argues that his/her information concerning <sup>Redacted</sup> activities regarding the <sup>Redacted</sup> were the focus of his/her tip and likely not duplicative of information provided by other witnesses. More specifically, Claimant 4 contends that his/her information was not duplicative of information already known to the SEC because <sup>Redacted</sup>

<sup>Redacted</sup> Claimant 4 also contends that he/she provided information to the staff about <sup>Redacted</sup> \*\*\*

Claimant 4 further contends that he/she referred the staff to an individual who had contacts with <sup>Redacted</sup> and that the staff interviewed this individual in <sup>Redacted</sup>. Additionally, after Claimant 4 submitted his/her information, Enforcement staff communicated that Claimant 4's assistance had been helpful. Based on these facts, Claimant 4 argues that his/her information contributed to the Covered Action and he/she should receive an award.

## II. Analysis

### A. Claimant 1

The record demonstrates that Claimant 1, a <sup>Redacted</sup> insider, voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action. Accordingly, Claimant 1 qualifies for a whistleblower award. Applying the award criteria as specified in Rule 21F-6 of the Exchange Act based on the specific facts and circumstances here, we find that an award of <sup>Redacted</sup> percent (<sup>\*\*\*</sup>%) is appropriate.<sup>8</sup> Claimant 1's information alerted Commission staff to the fraudulent scheme alleged in the Covered Action, and was the main basis for opening the investigation that resulted in the Covered Action. Claimant 1 provided Enforcement staff with detailed and highly significant information that advanced the staff's investigation, saved considerable Commission time and resources, and had a significant impact on the overall success of the enforcement action. Claimant 1 also provided ongoing

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<sup>7</sup> See Exchange Act Rule 21F-10(e), 17 C.F.R. §240.21F-10(e).

<sup>8</sup> In assessing the appropriate award amount, Exchange Act Rule 21F-6 provides that the Commission consider: (1) the significance of information provided to the Commission; (2) the assistance provided in the Commission action; (3) law enforcement interest in deterring violations by granting awards; (4) participation in internal compliance systems; (5) culpability; (6) unreasonable reporting delay; and (7) interference with internal compliance and reporting systems. 17 C.F.R. § 240.21F-6.

assistance by, among other things, participating in voluntary interviews and providing supporting documents to the staff.

## **B. Claimant 2**

The record demonstrates that Claimant 2 voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action. Accordingly, Claimant 2 qualifies for a whistleblower award. Applying the award criteria as specified in Rule 21F-6 of the Exchange Act based on the specific facts and circumstances here, we find that an award of \*\*\* percent (\*\*%) is appropriate. While much of Claimant 2's information was duplicative of information first provided by Claimant 1, Claimant 2's information included new information relating to certain charges filed in the Covered Action. Claimant 2's assistance consisted of a voluntary interview and providing documents to the staff. Overall, Claimant 2's contribution was significantly less than the contribution of Claimant 1, whose information was the main cause of the staff opening its investigation and was provided earlier in time.

Contrary to Claimant 2's response, his/her information did not contribute to the staff's opening of the investigation. Based on the date Claimant 2's counsel signed the whistleblower declaration, Claimant 2 argues that his/her tip was submitted prior to the date the staff opened the investigation. However, the record, including a supplemental declaration provided by staff assigned to the Covered Action investigation, which we credit, demonstrates that Claimant 2's counsel mailed the Form TCR to the SEC and the tip was not uploaded to the Commission's TCR system and distributed to staff handling the Covered Action investigation until after the investigation was opened. Thus, Claimant 2's information did not contribute to the opening of the investigation and Claimant 2's overall contribution to the Covered Action was not as significant as that of Claimant 1. While Claimant 2 also argues that the CRS failed to explain how his/her information was "duplicative" of information provided by Claimant 1, the Commission credits the original staff declaration, which contains sufficient evidence that some of Claimant 2's information was duplicative of information received from Claimant 1. As a result, Claimant 2 has not demonstrated that a greater award percentage is warranted.

## **C. Claimant 3**

The record demonstrates that Claimant 3 voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action. Accordingly, Claimant 3 qualifies for a whistleblower award. Applying the award criteria as specified in Rule 21F-6 of the Exchange Act based on the specific facts and circumstances here, we find that an award of \*\*\* percent (\*\*%) is appropriate. While much of Claimant 3's information was duplicative of information previously provided by Claimant 1 and Claimant 2, Claimant 3 provided limited new information that assisted the staff with respect to certain false statements alleged in the Covered Action. Any additional assistance by Claimant 3 was limited to providing documents and participating in an interview after the Covered Action was filed. Overall,

Claimant 3's contributions were significantly less than the contribution of Claimant 1, whose information was the main cause of the staff opening its investigation and was provided earlier in time. Furthermore, Claimant 3's contribution was also significantly less than the contribution of Claimant 2, whose information was also provided earlier in time. Additionally, Claimant 3's information was provided after significant progress had already been made by staff in the investigation.

Contrary to Claimant 3's assertions in his/her response, the record does not support that his/her information was "central" to the success of the Covered Action. Although Claimant 3's information supported certain allegations of false statements made by the defendants, the complaint contained numerous other allegations regarding false statements made by defendants derived from other sources, as well as allegations concerning the defendants' misappropriation of investor funds. Furthermore, although Claimant 3 argues that he/she provided voluminous supplemental submissions to the staff, the record demonstrates that the staff had already made significant progress in the investigation by the time Claimant 3 submitted this information, much of which was already known to the staff from other sources. Claimant 3, therefore, has not demonstrated that his/her information warrants a greater award percentage.

#### **D. Claimant 4**

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>9</sup> As relevant here, information will be deemed to have led to a successful enforcement action if it "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," and the Commission thereafter brought a successful action based in whole or in part on conduct that was the subject of the claimant's original information,<sup>10</sup> or was "about conduct that was already under examination or investigation by the Commission" and the "submission significantly contributed to the success of the action."<sup>11</sup> In determining whether 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>12</sup>

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<sup>9</sup> See Exchange Act Section 21F(b)(1), 15 U.S.C. §78u-6(b)(1).

<sup>10</sup> Exchange Act Rule 21F-4(c)(1), 17 C.F.R. §240.21F-4(c)(1).

<sup>11</sup> Exchange Act Rule 21F-4(c)(2), 17 C.F.R. §240.21F-4(c)(2).

<sup>12</sup> See Order Determining Whistleblower Award Claims, Release No. 34-85412, March 26, 2019; Order Determining Whistleblower Award Claims, Release No. 34-82897, March 19, 2018; *see also Securities Whistleblower Incentives & Protections*, 76 Fed. Reg. 34300, 34325 (June 13, 2011) (in determining whether information significantly contributed to an enforcement action, the Commission will consider whether the information allowed the agency to bring the action in significantly less time or with significantly fewer resources, additional successful claims, or successful claims against additional individuals or entities).

The record reflects that Enforcement staff opened the investigation mainly based on information submitted by Claimant 1. Additionally, most of the information provided by Claimant 4, which was provided after the opening of the investigation and after information was submitted by other claimants, was already known to Enforcement staff, and any additional information provided by Claimant 4 did not significantly contribute to the Covered Action.

Contrary to Claimant 4's assertions, the supplemental declaration from the Enforcement staff, which we credit, confirms that Claimant 4's information relating to <sup>Redacted</sup> <sup>Redacted</sup> did not cause staff to expand the investigation or allow them to recommend charges against additional defendants or additional charges against the defendants; nor did the information save the staff significant time or resources. First, the record demonstrates that information relating to <sup>Redacted</sup> was already known to the staff at the time Claimant 4 submitted his/her tip and Claimant 4's information at most corroborated information known to the staff from other sources months before Claimant 4's submission. To the extent Claimant 4 provided additional information related to <sup>Redacted</sup> the Covered Action did not include any claims related to <sup>Redacted</sup> <sup>Redacted</sup>. Therefore, we conclude that Claimant 4's additional information on <sup>Redacted</sup> conduct cannot satisfy Exchange Act Rules 21F-4(c)(1) or 21F-4(c)(2). Second, with respect to the individual purportedly identified by Claimant 4 who <sup>Redacted</sup> this individual provided the staff with information that was duplicative of information the staff had learned from other sources. Third, <sup>Redacted</sup>, the staff referenced <sup>Redacted</sup> that supported the Commission's claims that defendants made material misrepresentations. While <sup>Redacted</sup> referenced <sup>Redacted</sup> that was specifically mentioned by Claimant 4 in his/her tip, as well as <sup>Redacted</sup> that Claimant 4 had identified <sup>Redacted</sup> the Commission's allegations concerning these misrepresentations were also supported by evidence previously gathered in the investigation from other sources. The inclusion of <sup>Redacted</sup> did not have a significant impact on the Commission's ability to <sup>Redacted</sup>, as there were <sup>Redacted</sup> other <sup>Redacted</sup> with the same or similar misrepresentations that staff obtained from sources other than Claimant 4, as well as first-hand accounts from harmed investors, that were used in support of <sup>Redacted</sup>. Furthermore, the identification of <sup>Redacted</sup> which is public information, would not constitute "original information".<sup>13</sup> Fourth, although Enforcement staff communicated by email that Claimant 4's assistance had been "helpful," the staff also explained in the email that they had already received a substantial amount of information by the time Claimant 4 submitted his/her tip. According to the staff's supplemental declaration, the staff's email was not intended

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<sup>13</sup> In order for information derived from publicly available sources to qualify as original information, it must be derived from the whistleblower's "independent analysis." See Rule 21F-4(b), 17 C.F.R. § 240.21F-4(b). "Independent analysis" means an "examination and evaluation of information that may be publicly available, but which reveals information that is not already known or available to the public." Rule 21F-4(b)(3), 17 C.F.R. § 240.21F-4(b)(3).

to convey any legal conclusion regarding Claimant 4's eligibility for an award; rather, the staff's email was an effort to communicate that Claimant 4's information was helpful in that it corroborated other information they had previously received from other sources. Thus, Claimant 4 did not provide original information that led to the successful enforcement action and his/her award claim should be denied.

Claimant 4 also did not submit information in the form and manner required under Exchange Act Rules 21F-9(a) and (b), which require the submission of information on Form TCR or online through the Commission's website, and that a whistleblower sign the required whistleblower declaration. Claimant 4 originally submitted information in an email and did not submit a Form TCR with the required whistleblower declaration until approximately two years later. Based on the record, Claimant 4 is not eligible for the automatic waiver under Exchange Act Rule 21F-9(e), which waives the TCR filing requirement for otherwise meritorious whistleblowers who submit their information within 30 days of obtaining actual or constructive notice of the TCR filing requirement, because the record demonstrates that Claimant 4 did not provide information that led to the success of the Covered Action. Claimant 4 did not address his/her failure to satisfy Exchange Act Rules 21F-9(a) and (b) in his/her request for reconsideration. Since Claimant 4 failed to contest this ground for denial during the reconsideration stage, we note that Claimant 4 has forfeited the opportunity to contest this ground by failing to timely present arguments to the Commission.<sup>14</sup>

### III. Conclusion

Accordingly, it is hereby ORDERED that Claimant 1 receive an award equal to <sup>Redacted</sup> <sup>\*\*\*</sup> percent ( <sup>\*\*</sup> %) of the monetary sanctions collected or to be collected in the Covered Action, that Claimant 2 receive an award equal to <sup>\*\*\*</sup> percent ( <sup>\*\*</sup> %) of the monetary sanctions collected or to be collected in the Covered Action, and that Claimant 3 receive an award equal to <sup>\*\*\*</sup> percent ( <sup>\*\*</sup> %) of the monetary sanctions collected or to be collected in the Covered Action.<sup>15</sup>

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<sup>14</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.").

<sup>15</sup> Amounts distributed by the court-appointed receiver to harmed investors as relief for the securities law violations shall be included as collected monetary sanctions upon which the awards may be based. See 2020 Whistleblower Rules Adopting Release, 85 Fed. Reg. 70898, 70905 n.63 (Nov. 5, 2020).



It is further ORDERED that Claimant 4's whistleblower award application in the Covered Action be, and hereby is, denied.

By the Commission.

Vanessa A. Countryman  
Secretary