

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 96739 / January 24, 2023

WHISTLEBLOWER AWARD PROCEEDING  
File No. 2023-32

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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 a Preliminary Determination recommending that claimants Redacted (hereinafter, “Joint Claimants”) jointly<sup>1</sup> receive a whistleblower award in the amount of \*\*\* percent (\*\*\*%) of the monetary sanctions collected, or to be collected, in the above-referenced Covered Action (“Covered Action”) for a payout of over \$28 million, and that the award application submitted by Redacted (“Claimant 2”) be denied. The Joint Claimants provided written notice of their decision not to contest the Preliminary Determination and Claimant 2 submitted a notice contesting the preliminary denial of Claimant 2’s award claim. For the reasons discussed below, the CRS’s recommendations are adopted.<sup>2</sup>

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<sup>1</sup> We have determined to treat the Joint Claimants jointly as a “whistleblower” for purposes of the award determination given that they jointly submitted their information to the Commission 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”). Unless the Joint Claimants 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 four of them, the Office of the Whistleblower is directed to pay each of them individually 25% of their joint award.

<sup>2</sup> The CRS also preliminarily determined to recommend denying the award claim of an

## I. Background

### A. The Covered Action

On <sup>Redacted</sup> <sub>Redacted</sub>, the Commission filed a civil action against <sup>Redacted</sup> <sub>Redacted</sub> (together, the "Entity Defendants"), <sup>Redacted</sup> <sub>Redacted</sub>. The Commission alleged that the defendants <sup>Redacted</sup> <sub>Redacted</sub>. The Commission also alleged that the defendants <sup>Redacted</sup> <sub>Redacted</sub>. On <sup>Redacted</sup> <sub>Redacted</sub> the Commission obtained an order appointing a receiver (the "Receiver") over the Entity Defendants and several other affiliated entities.

<sup>Redacted</sup> <sub>Redacted</sub>, the Court entered final judgment against the Entity Defendants that, among other things, ordered the Entity Defendants liable for <sup>Redacted</sup> <sub>Redacted</sub>. The monies owed were deemed satisfied by the amount collected by the Receiver in the Covered Action and ultimately distributed under the Court-approved distribution plan.

The Court also entered final judgments against the individual defendants. To date, the Commission has collected <sup>Redacted</sup> <sub>Redacted</sub> from the individual defendants.

<sup>Redacted</sup> <sub>Redacted</sub> the Receiver has distributed <sup>Redacted</sup> <sub>Redacted</sub> to harmed investors. Amounts distributed to harmed investors by court-appointed receivers as relief for the securities violations, like here, may be treated as collected monetary sanctions for purposes of making an award payment.<sup>3</sup>

### B. The Preliminary Determination

The CRS issued a Preliminary Determination<sup>4</sup> recommending that (1) the Joint Claimants jointly receive an award of <sup>\*\*\*</sup> % of the monetary sanctions collected or to be collected in the Covered Action; and (2) the award claim of Claimant 2 be denied because Claimant 2's

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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).

<sup>3</sup> See Exchange Act Rule 21F-4(e): "Monetary sanctions means: (1) An order to pay money that results from a Commission action or related action and which is either: (i) Expressly designated as penalty, disgorgement, or interest; or (ii) Otherwise ordered as relief for the violations that are the subject of the covered action or related action . . ." 17 C.F.R. § 240.21F-4(e).

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

provision of information was not voluntary pursuant to Rule 21F-4(a) of the Exchange Act and because Claimant 2 did not submit a Form TCR to the Commission as required by Rule 21F-9.

## II. Joint Claimants

The record demonstrates that the Joint Claimants voluntarily provided original information to the Commission that led to the success of the Covered Action.<sup>5</sup> Specifically, in <sup>Redacted</sup>, two of the Joint Claimants submitted a detailed Form TCR alleging that the Entity Defendants were engaged in a <sup>Redacted</sup> scheme. Their information prompted the opening of the Commission staff's investigation. In <sup>Redacted</sup>, all four of the Joint Claimants submitted a supplemental Form TCR providing significant new information and analyses that significantly contributed to the success of the Covered Action. In determining that the Joint Claimants should receive a <sup>\*\*\*</sup> % award, the Commission considered the factors under Exchange Act Rule 21F-6.<sup>6</sup> The record reflects that (1) the Joint Claimants provided significant information based on both "independent knowledge" and "independent analysis";<sup>7</sup> (2) Joint Claimants met with Commission staff on several occasions and provided substantial ongoing assistance throughout the investigation; (3) Joint Claimants' information and assistance was critical to staff's ability to identify and investigate the unlawful securities violations and resulting Covered Action and there is a close nexus between their information and the Commission's charges; and (4) the information provided by Joint Claimants resulted in the return of millions of dollars to harmed investors.

## III. Claimant 2

### A. Preliminary Determination and Response

The CRS preliminarily determined to recommend that Claimant 2's award claim be denied because Claimant 2's information was not provided voluntarily and Claimant 2 failed to provide information on Form TCR. On <sup>Redacted</sup>, more than a year after the

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<sup>5</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>6</sup> In assessing the appropriate award amount, Exchange Act Rules 21F-6(a) and (b) provide 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(a) and (b).

<sup>7</sup> "Independent knowledge" is "factual information in [the submitter's] possession that is not derived from publicly available sources" and which may have been gained from the submitter's "experiences, communications and observations" in his "business or social interactions." "Independent analysis" means one's own "examination and evaluation of information that may be publicly available, but which reveals information that is not generally known or available to the public." Rule 21F-4(b)(2).

investigation had been opened, Claimant 2, <sup>Redacted</sup>, sent a letter to <sup>Redacted</sup> outlining a number of concerns that he/she had regarding the company's operations. Despite being aware of the ongoing SEC investigation, Claimant 2 did not provide the letter to the SEC or other regulators; nor did Claimant 2 request that the letter or its contents be shared with the SEC or other regulators. In <sup>Redacted</sup>, outside counsel for the company provided the letter to the Commission staff. After receiving the letter, Enforcement staff reached out to Claimant 2's counsel to arrange a meeting. Staff from Enforcement and the criminal authorities met with Claimant 2 and his/her counsel in <sup>Redacted</sup>, and also had a subsequent phone call with Claimant 2 in <sup>Redacted</sup>. After meeting with Enforcement, Claimant 2 never submitted his/her <sup>Redacted</sup> letter or any other information to the Commission as part of a tip or complaint. Claimant 2 subsequently had a meeting with criminal authorities in <sup>Redacted</sup>.

In Claimant 2's request for reconsideration, he/she acknowledges that Enforcement staff requested a meeting with him/her, but believes he/she should still be viewed as providing his/her information voluntarily because he/she reported his/her concerns internally and voluntarily cooperated with the criminal authorities. Claimant 2 also concedes that he/she did not file a Form TCR, although he/she was aware of the SEC investigation. However, Claimant 2 requests that the Commission waive the Form TCR requirement because while he/she had counsel at the time he/she reported to the company's <sup>Redacted</sup>, his/her counsel was not "an experienced SEC whistleblower attorney" and the whistleblower rules were "complicated and ambiguous."<sup>8</sup>

## B. Analysis

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. Rule 21F-4(a) defines a voluntary submission as one that is provided "before a request, inquiry, or demand that relates to the subject matter of [the] submission" is directed to the whistleblower or his or her personal representative "[b]y the Commission." Rule 21F-4(a)(2) further states, "[H]owever, your submission of information to the Commission will be considered voluntary if you voluntarily provided the same information to [another federal agency] prior to receiving a request, inquiry, or demand from the Commission."

After receiving the <sup>Redacted</sup> letter from the company's outside counsel, Enforcement staff contacted Claimant 2's counsel, his/her personal representative, to set up an interview with

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<sup>8</sup> Claimant 2 complains that he/she contacted OWB several times to discuss his/her pending award claim and was "consistently rebuffed by Office staff on the basis that Staff will not discuss pending claims." While OWB does not discuss pending claims or provide legal advice to claimants, OWB does provide information to whistleblowers and their counsel about the Commission's whistleblower program through the OWB whistleblower hotline. However, OWB was unable to find any record of Claimant 2 contacting the OWB hotline.

Claimant 2. Thus, Enforcement staff initiated contact with Claimant 2 before he/she provided his/her information to the Commission or to any other regulator. As such, the information he/she thereafter provided to the Commission was not provided voluntarily.<sup>9</sup> Additionally, while Rule 21F-4(b)(7) contains a look-back provision for persons who report internally or to another agency and then submit the information to the Commission within 120 days, Claimant 2 did not submit a tip to the Commission after reporting internally. Finally, finding that Claimant 2 provided his/her information voluntarily under these facts and circumstances would be inconsistent with the statutory purpose of incentivizing whistleblowers to come forward early rather than waiting for authorities to “come knocking on the door.”<sup>10</sup>

Additionally, under Rule 21F-2(b), to be eligible for a whistleblower award, claimants are required to submit their information in the form and manner required by Rule 21F-9. Claimant 2 did not submit information either on Form TCR or online through the Commission’s website, as required by Rule 21F-9(a), and did not sign the whistleblower declaration, as required by Rule 21F-9(b). Claimant 2 is not eligible for the automatic waiver of the TCR filing requirements under Rule 21F-9(e).<sup>11</sup> Individuals who are represented by counsel in connection with the submission of information to the Commission are on constructive notice of the TCR filing requirement. Claimant 2 was represented by counsel in connection with his/her <sup>Redacted</sup> letter to company <sup>Redacted</sup>. To this day, Claimant 2 has not submitted a Form TCR with the Commission, despite being on notice of the requirement. Furthermore, the record does not unambiguously show that Claimant 2 would be an otherwise meritorious whistleblower because, as discussed above, his/her information was not provided voluntarily.

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<sup>9</sup> *Order Determining Whistleblower Award Claim*, Exchange Act Release No. 34-92355 (July 9, 2021), *aff’d on other grounds*, No. 21-1165 (D.C. Cir. May 27, 2022) (finding that claimant who reported concerns to his/her brokerage client, who in turn reported to the Commission, was not voluntary because the criminal authorities requested to meet with claimant prior to claimant providing information to the Commission or criminal authorities).

<sup>10</sup> *Id.* citing Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934, 70,490 (Nov. 3, 2010)).

<sup>11</sup> “You must follow the procedures specified in paragraphs (a) and (b) of this section within 30 days of when you first provide the Commission with original information that you rely upon as a basis for claiming an award. If you fail to do so, then you will be deemed ineligible for an award in connection with that information (even if you later resubmit that information in accordance with paragraphs (a) and (b) of this section).” Rule 21F-9(e).

### **III. Conclusion**

Accordingly, it is ORDERED that Joint Claimants shall receive a joint award of \*\*\* percent ( %) of the monetary sanctions collected, or to be collected, in the Covered Action and that Claimant 2's award application be, and hereby is, denied.

By the Commission.

Vanessa A. Countryman  
Secretary