

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 94743 / April 18, 2022

WHISTLEBLOWER AWARD PROCEEDING  
File No. 2022-51

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In the Matter of the Claim 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 the denial of the whistleblower award claims submitted by Redacted (“Claimant 1”) and Redacted (“Claimant 2”) in connection with the above-referenced covered action (“Covered Action”). Claimants 1 and 2 filed timely responses contesting their preliminary denials.<sup>1</sup> For the reasons discussed below, both Claimants’ award claims are denied.

**I. Background**

**A. The Covered Action**

In Redacted, staff from the Division of Enforcement opened an investigation (“Investigation”) based on a self-report by Redacted (the “Company”), indicating that Redacted subsidiaries of the Company had made improper payments to employees of its Redacted Redacted between at least Redacted in an effort to obtain or retain business in Redacted. On Redacted, the Commission instituted a settled administrative cease-and-desist proceeding against the Company, charging it with violations of Redacted Redacted. The Commission ordered the Company to pay Redacted, consisting of disgorgement and prejudgment interest.<sup>2</sup>

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<sup>1</sup> The Preliminary Determinations also recommended denying awards to one other claimant. This claimant did not contest the Preliminary Determination and, accordingly, the claimant’s Preliminary Determination has become the Final Order of the Commission. Exchange Act Rule 21F-10(f), 17 C.F.R. §240.21F-10(f).

<sup>2</sup> The Commission noted in its order that it did not impose a civil penalty based upon the Company’s

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. Claimants 1 and 2 filed timely whistleblower award claims.<sup>3</sup>

## **B. The Preliminary Determinations**

On <sup>Redacted</sup>, the CRS issued Preliminary Determinations<sup>4</sup> recommending that both Claimants’ claims be denied because the information they provided did not lead to the successful enforcement of the Covered Action.<sup>5</sup> In its Preliminary Determinations, the CRS found that the staff responsible for the Investigation did not receive any information from, or have any communications with, either Claimant.

## **C. Claimants’ Responses to the Preliminary Determinations**

Claimant 1 argues that he/she provided the Commission with original information related to certain suspected <sup>Redacted</sup> activities of the Company’s wholly-owned subsidiary in <sup>\*\*\*</sup> just a few months before the Investigation was opened and that his/her submission significantly contributed to the success of the Covered Action.<sup>6</sup> Claimant 1 also contends that he/she reported these facts <sup>Redacted</sup> to the Company’s senior management,<sup>7</sup> as well as to <sup>Redacted</sup> in connection with a contemporaneous related <sup>Redacted</sup> action (the “<sup>\*\*\*</sup> Action”) for which he/she asserts he/she qualifies for a related action award.

Claimant 2 makes two contentions. First, Claimant 2 asserts that the information Claimant 2 provided to the Commission formed at least part of the grounds for the subpoena that the staff issued to the Company and that this subpoena elicited information that assisted the

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

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

<sup>5</sup> See Exchange Act Rule 21F-4(c), 17 C.F.R. §240.21F-4(c).

<sup>6</sup> Claimant 1 also alleges the CRS acted improperly by relying upon a staff declaration that was not signed until after the Preliminary Determination was issued. There is no merit to this contention. The unsigned and signed versions of the declaration are identical in every respect except for the signature such that the information relied upon by the CRS in its Preliminary Determination was not impacted by the signature being affixed immediately after the CRS met to approve the Preliminary Determination.

<sup>7</sup> Rule 21F-4(c)(3), 17 C.F.R. §240.21F-4(c), provides that a whistleblower can be credited with having provided original information that led to the successful enforcement of a judicial or administrative action if, as relevant here, the whistleblower “reported original information through an entity’s internal whistleblower, legal, or compliance procedures for reporting allegations of possible violations of law before or at the same time [the whistleblower] reported them to the Commission; the entity later provided [this] information to the Commission, or provided results of an audit or investigation initiated in whole or in part in response to information [the whistleblower] reported to the entity; and the information the entity provided to the Commission satisfies either paragraph (c)(1) or (c)(2) of this section.”

Investigation and contributed to the success of the Covered Action. In addition, Claimant 2 argues that the CRS's denial of his/her award claim was in retaliation for Claimant 2 having exposed a purported insider-trading ring in a separate and unrelated matter allegedly involving, among other parties, "OWB and the highest levels of SEC Enforcement."<sup>8</sup>

## II. Analysis

To qualify for an award under Section 21F of the Securities Exchange Act of 1934 ("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, original information leads 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; or (ii) the conduct was already under examination or investigation, and the original information significantly contributed to the success of the action.<sup>10</sup>

We find that none of the information that Claimant 1 or Claimant 2 submitted led to the successful enforcement of the Covered Action. The staff responsible for the Covered Action credibly declared, under penalty of perjury, that it neither received nor used any of the information provided by either Claimant during the Investigation or in the Covered Action, nor did it have any communications with the Claimants. Moreover, the information the Claimants provided did not relate to the matters considered in the Investigation.<sup>11</sup>

With regard to Claimant 1's assertion that he/she reported his/her allegations to the Company's senior management and that this caused the Company to commence its internal investigation that led to it self-reporting to the Commission, the staff credibly declared, under

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<sup>8</sup> Claimant 2 claims that based on information Claimant 2 provided "Redacted conducted an investigation that directly resulted in [certain individuals] being removed from their SEC positions due to their involvement in an insider-trading ring which had unfairly targeted Redacted to benefit short sellers" and that a former SEC Commissioner "made a lengthy series of highly unusual statements and media appearances as part of the conspiracy to single out and sink \*\*\* stock for the benefit of short sellers."

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

<sup>10</sup> See Exchange Act Rule 21F-4(c)(1)-(2), 17 C.F.R. § 240.21F-4(c)(1)-(2).

<sup>11</sup> The staff's declaration states that the allegations raised in Claimant 1's tip, which the declarant reviewed for the first time in preparing the declaration for Claimant 1's award claim, did not relate to, or impact, the Investigation, noting that the evidence against the Company was "developed separately from any of the very limited information in [Claimant 1]'s unrelated complaint." The declaration points out, for example, that a key entity identified in Claimant 1's tip "was never a part of the . . . Investigation" and that "[t]he [Company] employees referenced by [Claimant 1] were not involved in the misconduct that led to the [Covered] Action."

Claimant 2's complaint alleged that the Company had misappropriated software from another company and that this misappropriation "[gave] rise to an unfunded liability" which was not reflected in the Company's financial statements. Claimant 2 also claimed to have been terminated "in retaliation for [Claimant 2's] good faith reports." None of Claimant 2's information related to the \*\*\* issues in the Investigation or the Covered Action.

penalty of perjury, that the Company told the staff that its internal investigation was initiated by an anonymous complaint concerning a <sup>Redacted</sup>

<sup>Redacted</sup>.<sup>12</sup> In contrast, Claimant 1's tip to the Company mentioned completely different individuals and entities <sup>Redacted</sup> involving, among other conduct, <sup>Redacted</sup>. Accordingly, we find that Claimant 1's tip was not the cause of the Company's internal investigation.

Finally, turning <sup>\*\*\*</sup> to Claimant 1's contention that he/she qualifies for an award in connection with the <sup>\*\*\*</sup> Action, this argument also fails. A related action award may be made only if, among other things, the claimant satisfies the eligibility criteria for an award for the applicable covered action in the first instance. As Claimant 1 does not qualify for an award in the Covered Action, Claimant 1's claim for an award in connection with the <sup>\*\*\*</sup> Action cannot succeed.

Finally, Claimant 2 has provided no factual support for his/her allegations that the CRS's denial recommendation was made in retaliation for Claimant 2 having exposed purported malfeasance by OWB or senior officials in the Division of Enforcement.

### III. Conclusion

Accordingly, it is hereby ORDERED that the whistleblower award applications of Claimants 1 and 2 be, and hereby are, denied.

By the Commission.

Vanessa A. Countryman  
Secretary

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<sup>12</sup> According to the staff's declaration, the Company explained that this anonymous tip led it to conduct an internal investigation in which it discovered that <sup>Redacted</sup>

<sup>Redacted</sup>

<sup>Redacted</sup>