

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 95484 / August 12, 2022

WHISTLEBLOWER AWARD PROCEEDING  
File No. 2022-72

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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.<sup>1</sup>

**I. Background**

**A. The Covered Action**

On Redacted the Commission filed a complaint against Redacted Redacted (the “Defendants”) alleging that the Defendants Redacted

Redacted On Redacted the court entered final judgment against Redacted the Defendants, permanently enjoining them from future violations of Redacted Redacted The court entered judgment against Redacted Defendants on Redacted and Redacted ordering additional monetary sanctions of more than Redacted in disgorgement, prejudgment interest,

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<sup>1</sup> The CRS also preliminarily denied the award claims of two other claimants. Those claimants did not seek reconsideration of the Preliminary Determinations, and therefore the denials of their claims were deemed to be the Final Orders of the Commission under Exchange Act Rule 21F-10(f).

and civil penalties. The court also permanently enjoined these other Defendants from future violations of <sup>Redacted</sup>

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 on the grounds that Claimant did not provide information to the Commission that led to the successful enforcement of the Covered Action. The CRS concluded that none of the information submitted by Claimant either (1) caused 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 contributed to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act. The CRS concluded that Enforcement staff assigned to the investigation which led to the Covered Action (the “Investigation”) did not receive any information from Claimant and did not have any communications with Claimant. The record also showed that the Investigation was opened on or about <sup>Redacted</sup> based upon three referrals from <sup>Redacted</sup> (the “Other Agency”) concerning <sup>Redacted</sup> issuers (the “Issuers”).

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

Claimant submitted a timely written response (the “Response”) contesting the Preliminary Determination.<sup>2</sup> Claimant principally argues that Claimant was the original source of the information in the referrals that the Commission received from the Other Agency. Claimant argues that “[Claimant] also provided SEC and [Other Agency] original information on the . . . companies referenced in the SEC’s Complaint . . . and the scheme that led to the SEC’s award against [defendant].” Claimant also contends that his/her independent analysis of misconduct <sup>Redacted</sup> (the “Other Company”) “was key to the Commission’s successful enforcement action.” In support of his/her contention, and as “secondary confirmation” that he/she provided information to the Other Agency, Claimant attached a “collection of [Claimant’s] tips to [Other Agency] and/or SEC regarding [the Other Company] and securities manipulated by the same. Each security referred to [Other Agency]/SEC by [Claimant] was subject of a . . . scheme identical to that of [the Issuers].”<sup>3</sup>

## **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

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

<sup>3</sup> Claimant also contends that he/she is entitled to copies of the Other Agency referrals to the Commission.

enforcement of a covered action.<sup>4</sup> Additionally, and as relevant here, original information will be deemed to lead 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;<sup>5</sup> or (ii) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”<sup>6</sup> In addition, the Commission will consider an individual to be the “original source” of the same information the Commission obtains from another source if the information satisfies the definition of original information and the other source obtained the information from the individual or the individual’s representative.<sup>7</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>8</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>9</sup>

For the reasons discussed below, Claimant’s information does not merit a whistleblower award in the Covered Action.

First, Claimant argues for the first time in his/her Response that Claimant was the original source of information provided to the Other Agency which must have caused the Other Agency to make referrals to the Commission. However, Other Agency staff confirmed with OWB staff that Other Agency records do not indicate that the referrals were opened based upon information from Claimant or any other whistleblower. The Other Agency typically tracks if referrals originated from a tip or complaint from a member of the public. Here, Other Agency records demonstrate that the referrals originated with (1) Other Agency’s own review of the price and volume activity of \*\*\* Issuer’s security, and (2) Other Agency’s review of <sup>Redacted</sup> Issuers promotional material. In addition, Enforcement staff assigned to the Investigation confirmed in a supplemental declaration, which we credit, that the <sup>Redacted</sup> Other Agency referrals did not mention that the Other Agency received any information from Claimant or any other whistleblower or informant. Staff assigned to the Investigation further confirmed that the staff has no recollection of an Other Agency representative identifying or mentioning Claimant as a

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<sup>4</sup> Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

<sup>5</sup> See Exchange Act Rule 21F-4(c)(1); 17 C.F.R. § 240.21F-4(c)(1).

<sup>6</sup> See Exchange Act Rule 21-F-4(c)(2), 17 C.F.R § 240.21F-4(c)(2).

<sup>7</sup> Exchange Act Rule 21F-4(b)(5); 17 C.F.R § 240.21F-4(b)(5).

<sup>8</sup> Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 90922 at 4 (Jan. 14, 2021); *see also* Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 85412 at 9 (Mar. 26, 2019).

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

source of information for the referrals at issue. Therefore, the record does not show that Claimant was the original source for the referrals from the Other Agency and thus does not show that Claimant's information caused the staff to open the Investigation.

Second, because the evidence does not establish that Claimant's information caused the staff to open the Investigation, Claimant's information can only be deemed to have led to the success of the Covered Action if it caused the staff to inquire concerning different conduct as part of a current investigation<sup>10</sup> or "significantly contributed to the success of the action."<sup>11</sup> While Claimant included a document in the Response indicating that Claimant was in communication with a Commission staff member, according to the staff's supplemental declaration, the staff assigned to the Investigation never received or reviewed Claimant's information from that staff member. Further, the staff supplemental declaration confirmed that staff assigned to the Investigation never reviewed or received information from Claimant or had communications with Claimant. Accordingly, we find that Claimant's information did not cause the staff to look into different conduct as part of its ongoing investigation, nor did Claimant's information significantly contribute to the success of the action.<sup>12</sup>

Therefore, Claimant's information does not qualify Claimant for a whistleblower award.

### **III. Conclusion**

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

By the Commission.

Vanessa A. Countryman  
Secretary

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<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> In addition, Claimant is not entitled to copies of the referrals from the Other Agency. Exchange Act Rule 21F-12(a) lists the materials that form the basis for the Preliminary Determination and that Claimant may request from the Commission. *See* Exchange Act Rule 21F-10(e)(1). "These rules do not entitle [Claimant] to obtain from the Commission any materials . . . other than those listed in paragraph (a) of this section." Exchange Act Rule 21F-12(b). Referrals and other Commission investigative files are not included in the materials listed in Rule 21F-12(a) and thus not available to Claimant.