

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 96604 / January 6, 2023

WHISTLEBLOWER AWARD PROCEEDING  
File No. 2023-22

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In the Matter of the Claim for an Award

in connection with

Redacted

Redacted

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM**

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending granting a whistleblower award to <sup>Redacted</sup> (“Claimant”) in connection with the above-referenced Covered Action (the “Covered Action”). Claimant timely filed a request for reconsideration of the preliminary award. For the reasons discussed below, Claimant’s award application is granted, and Claimant shall receive an award of nearly \$5 million, equal to <sup>\*\*\*</sup> % of the monetary sanctions collected in the Covered Action.

**I. BACKGROUND**

**A. The Covered Action**

On <sup>Redacted</sup>, the Commission instituted a settled enforcement proceeding against <sup>Redacted</sup> (“the Company”). According to the Commission’s Order, the Company <sup>Redacted</sup> (hereinafter, “the Transaction”).

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Redacted conduct, the CRS concluded that Claimant had unreasonably delayed in contacting the Commission with his/her information and should therefore only receive a \*\*\* % award.

The CRS also recommended that Claimant's award be subject to an administrative offset for any disgorgement, prejudgment interest, and penalty amounts that remained unpaid by Claimant or Redacted related to the Commission's Order Redacted (the "Other Unrelated Matter").

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

Claimant filed a timely request for reconsideration<sup>1</sup> arguing that Claimant should be awarded a greater percentage of the monetary sanctions received and that Claimant's payment should not be subject to an administrative offset. First, Claimant asserts that he/she was not aware of the Company's misconduct in \*\*\* and therefore did not unreasonably delay contacting the Commission. Second, Claimant argues that Enforcement staff likely would not have discovered the fraud absent Claimant's information. Third, Claimant claims that Claimant's tip and assistance were not motivated by Claimant's receipt of an investigative subpoena from the Enforcement staff related to the Other Unrelated Matter. And fourth, Claimant argues that an offset of Claimant's award based on Redacted in the Other Unrelated Matter is inappropriate.

## II. ANALYSIS

To qualify for a whistleblower award under Section 21F of the Exchange Act, an individual must voluntarily provide the Commission with original information that leads to the successful enforcement of a covered action.<sup>2</sup>

Consistent with the Preliminary Determination, we find that Claimant meets the definition of a whistleblower under Rule 21F-2(a) and satisfies the statutory criteria for a whistleblower award under Rule 21F-3(a). Claimant provided information about the Company's fraud "in writing" in Redacted.<sup>3</sup> Claimant's submission was voluntary because Claimant provided information about the Transaction to the Commission on Claimant's own initiative

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

<sup>2</sup> See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

<sup>3</sup> See Rules 21F-2 and 21F-9(d).

before the Commission or another regulatory agency requested it from Claimant.<sup>4</sup> Although Enforcement staff had issued an investigatory subpoena to Claimant before Claimant’s submission, that subpoena and the underlying investigation did not “relate[] to the subject matter of [Claimant’s] submission.”<sup>5</sup>

Claimant provided original information based on independent knowledge and analysis and not already known to the Commission from any other source.<sup>6</sup> Claimant learned the information submitted to the Commission through Claimant’s work as <sup>Redacted</sup> <sub>Redacted</sub> and through Claimant’s independent analysis of the Transaction. Commission staff was not previously aware of much of the information in Claimant’s tip, in particular how the Company harmed investors by <sup>Redacted</sup> <sub>Redacted</sub>.

Finally, Claimant’s information led to the success of the Covered Action in that it was “sufficiently specific, credible, and timely to cause the staff to . . . open an investigation,” and the Covered Action was “based in whole or in part on conduct that was the subject” of Claimant’s submission.<sup>7</sup>

Applying the award criteria as specified in Rule 21F-6 of the Exchange Act based on the facts and circumstances here, we find that an award of \*\*\* % for Claimant in the Covered Action is appropriate.<sup>8</sup>

Claimant’s information was important in that it caused staff to promptly open its investigation, and Claimant’s allegations are closely aligned with the Commission’s charges against the Company. Claimant also provided some additional assistance in the course of an in-person meeting and two phone calls. On the other hand, by the time Claimant first contacted the Commission, Enforcement staff was investigating <sup>Redacted</sup> <sub>Redacted</sub> and already possessed evidence that the Company <sup>Redacted</sup> <sub>Redacted</sub> in connection with the

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<sup>4</sup> See Rules 21F-3(a)(1) and 21F-4(a).

<sup>5</sup> See Rule 21F-4(a).

<sup>6</sup> See Rules 21F-3(a)(2) and 21F-4(b).

<sup>7</sup> See Rules 21F-3(a)(3) and 21F-4(c)(1).

<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.

Transaction, which it only disclosed when asked directly.

Claimant asserts that the staff was unlikely to uncover the Company's fraud absent his/her tip. Redacted Claimant offered unique insight into the Redacted. But the charges against the Company equally arose from the Redacted, and Enforcement staff could have determined that the Company Redacted

Redacted. While we acknowledge that Claimant's information helped Enforcement staff uncover the fraud more quickly, the significance of Claimant's information is tempered by the fact that Enforcement staff had already gathered some information and context about the Redacted prior to Claimant's information.

In addition, Claimant unreasonably delayed in contacting the Commission with his/her information. The record indicates that, contrary to Claimant's request for reconsideration, Claimant understood the nature of the fraud in Redacted but did not report it until after Claimant had received an investigatory subpoena from Enforcement staff in connection with the Other Unrelated Matter.

Claimant claims that Claimant did not realize in Redacted that the Company was Redacted in Redacted, but the record does not support this argument. The record indicates that in Redacted, Claimant was Redacted the Transaction on the ground that the Redacted. In the Transaction, Redacted. The record therefore indicates that Claimant understood the nature of the Company's misconduct in Redacted. We do not credit Claimant's argument to the contrary.

Claimant also argues that Claimant could not have known of the Company's misconduct in Redacted because Claimant, Redacted, would not have been privy to what the Company and Redacted. Again, we do not credit this argument. The record, which includes a supplemental declaration from the Enforcement staff which we credit, reflects that multiple individuals with whom Claimant communicated frequently at the time had learned from the Company that it was Redacted. Thus while the Company or \*\*\* may not have directly told Claimant that the Company was Redacted, that information was known to individuals outside those organizations, including individuals who were in communication with Claimant at the time. And even if Claimant learned more information about and understanding of the Transaction after analyzing it, the record reflects that in \*\*\* Claimant was aware of enough facts about the underlying conduct that he/she could have submitted a fulsome tip at that time.

Regarding Claimant's motivation to report the Company's misconduct, Claimant asserts that it was unrelated to Claimant's receipt of a subpoena by Enforcement staff investigating his/her own conduct. Claimant claims that in <sup>\*\*\*</sup>, before receiving any investigatory subpoena, he/she began doing research into the <sup>Redacted</sup> to see if he/she could find wrongdoing to make a whistleblower submission in anticipation of the Dodd-Frank Act being enacted. Claimant also argues that Claimant had no reason to believe Claimant had done anything <sup>Redacted</sup> wrong and so was not concerned about the staff's investigation in the Other Unrelated Matter. <sup>Redacted</sup>

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First, we note that Claimant's motivation is not an award criterion, so we need not make a specific finding on this issue. Second, Claimant's assertion that Claimant had done nothing wrong is also not related to any award criterion, so we decline to make any findings on that issue.

Regardless of Claimant's motivation for submitting the tip when he/she did, we find that Claimant substantially and unreasonably delayed in reporting Claimant's information by waiting approximately four years to provide information to the Commission and doing so only after Claimant received a subpoena from the SEC related to Claimant's own misconduct. We further find that a <sup>\*\*\*</sup> % award will adequately acknowledge Claimant's involvement with, and contributions to, the Covered Action, while taking into account his/her substantial delay in reporting.

Finally, after careful consideration of Claimant's argument regarding the above-mentioned offset, we have determined not to offset the award by the amount of <sup>Redacted</sup> <sup>Redacted</sup> in the Other Unrelated Matter. We therefore will not order that the award payment be offset against the outstanding <sup>Redacted</sup> amount.

### III. CONCLUSION

Accordingly, it is hereby ORDERED that Claimant's whistleblower award application is granted, and Claimant shall receive an award of <sup>\*\*\*</sup> % of monetary sanctions collected or to be collected in the Covered Action.

By the Commission.

Vanessa A. Countryman  
Secretary