

UNITED STATES OF AMERICA before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 90247 / October 22, 2020

WHISTLEBLOWER AWARD PROCEEDING

File No. 2021-2

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In the Matter of the Claim for 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 Redacted (“Claimant 1”) receive an aggregate whistleblower award of over \$114 million. The CRS preliminarily determined to recommend a nearly \$52 million award to Claimant 1, equal to Redacted percent ( % ) of the monetary sanctions collected, in the above referenced Covered Action (“the Covered Action”). The CRS also preliminarily determined to recommend that Redacted related Redacted

Redacted constitute “related actions” to the Covered Action and to grant Claimant 1 a whistleblower award of over \$62 million, equal to Redacted percent ( % ) of the monetary sanctions collected in the Related Actions.<sup>1</sup> The CRS further preliminarily determined to recommend the denial of the award applications submitted by Redacted (“Claimant 2”) and joint claimants Redacted (“Claimant 3”) and Redacted (“Claimant 4”). Claimant 1 provided written notice of Claimant 1’s decision not to contest the Preliminary Determinations, and Claimants 2, 3 and 4 submitted timely notices contesting the preliminary denial of their award claims. For the reasons discussed below, and based on the Commission’s independent review of the materials before us, we adopt the CRS’s recommendations with respect to Claimant 1, Claimant 2, Claimant 3, and Claimant 4.

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<sup>1</sup> See Securities Exchange Act of 1934 (“Exchange Act”) Section 21F(a)(5), 15 U.S.C. § 78u-6(a)(5), and Rule 21F-3(b), 17 C.F.R. § 240.21F-3(b).

**I. Background**

**A. The Covered Action**

On [Redacted] the Commission filed a complaint alleging that [Redacted] or “Company”) [Redacted]. [Redacted] [Redacted] The complaint also alleged that [Redacted]. [Redacted] In addition, the Commission alleged that [Redacted]. [Redacted] [Redacted] The complaint further alleged that [Redacted]. [Redacted] Under the settlement, [Redacted]. [Redacted] [Redacted]

On [Redacted] the Office of the Whistleblower posted the above-referenced Notice of Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days.<sup>2</sup> Claimants 1, 2, 3, and 4 all filed timely whistleblower award claims.

**B. The Related Actions**

On [Redacted] (“Other Agency”) [Redacted] which alleged similar misconduct as the Covered Action. The Other Agency charged [Redacted]. [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]

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

### C. The Preliminary Determinations

The Claims Review Staff (“CRS”)<sup>3</sup> issued Preliminary Determinations<sup>4</sup> recommending that: (1) Claimant 1 receive an award of “” % of the monetary sanctions collected in the Covered Action; (2) Claimant 1 receive an award of “” % of the monetary sanctions collected in the Related Actions; (3) the award claims of Claimants 2, 3, and 4 in the Covered Action be denied; and (4) the award claims of Claimants 2, 3, and 4 in connection with the Related Actions be denied.<sup>5</sup> The CRS preliminarily determined to recommend that Claimant 2’s, Claimant 3’s and Claimant 4’s award claims in the Covered Action be denied because their information did not lead to the success of the Covered Action as required under Exchange Act Rule 21F-4(c).<sup>6</sup> Claimant 2’s information did not cause the opening of the staff’s investigation, which was opened based on information provided by Claimant 1. While Enforcement staff responsible for the Covered Action received Claimant 2’s information several years after the opening of the investigation, Claimant 2’s information involved conduct that was not related to the Commission’s charges. Furthermore, Claimant 2’s information was not used in and had no impact on the Covered Action. The information from joint claimants 3 and 4 also involved conduct that was not related to the Commission’s charges and was not used by the staff in the Covered Action.<sup>7</sup>

### D. Claimant 2’s Response to the Preliminary Determination

Claimant 2 submitted a timely written response contesting the Preliminary Determination.<sup>8</sup> Claimant 2 contends that his/her information, which was submitted prior to Claimant 1’s information, may have laid the groundwork for the staff’s decision to open the investigation in the Covered Action. Specifically, Claimant 2 contends that staff in the Commission’s <sup>Redacted</sup> Office reviewed and evaluated his/her tip, and may have had some involvement in the <sup>Redacted</sup> Office’s (“<sup>Redacted</sup> Office”) decision to open the Covered Action investigation and that his/her information may have influenced that decision.

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<sup>3</sup> Rule 21F-10(d) under the Exchange Act provides that the CRS will “evaluate all timely whistleblower award claims submitted on Form WB-APP in accordance with the criteria set forth in the rules.” 17 C.F.R. § 240.21F-10(d).

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

<sup>5</sup> The CRS also recommended that the award claims of Claimant 5 and Claimant 6 be denied. These individuals did not contest the preliminary denial of their claims. Accordingly, the Preliminary Determinations with respect to their award claims became the Final Order of the Commission through operation of Exchange Act Rule 21F-10(f), 17 C.F.R. §240.21F-10(f).

<sup>6</sup> *Order Determining Whistleblower Award Claims*, Exch. Act Rel. No. 85412, 2018 SEC LEXIS 615, at \*16 (Mar. 26, 2019); *Order Determining Whistleblower Award Claims*, Exch. Act Rel. No. 82897, 2018 SEC LEXIS 750, at \*16 (Mar. 19, 2018).

<sup>7</sup> The Preliminary Determinations determined that, because Claimants 2, 3, and 4 are not eligible for an award in the Covered Action, they do not qualify for an award in any related action. 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. See 15 U.S.C. § 78u-6(b); Exchange Act Rule 21F-3(b), (b)(1); Rule 21F-4(g) and (f); Rule 21F-11(a).

<sup>8</sup> See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

Additionally, Claimant 2 contends that issues he/she raised may have contributed to the Office staff's formulation of the first document request to the Company in

### E. Response of Joint Claimants 3 and 4 to the Preliminary Determination

Claimants 3 and 4 submitted a timely written response contesting the Preliminary Determination. Claimants 3 and 4 argue in response to the Preliminary Determination that their information, which related to alleged misconduct by the Company, was material to the overall settlement in the Covered Action because, in light of the, they believe the Company would never have settled with the Commission and the Other Agency unless there was no risk of an additional investigation into their allegations. Claimants 3 and 4 make the following arguments. First, Claimants 3 and 4 contend that must have asked for assurances from SEC staff that they would not pursue a investigation if the Company entered into a settlement. Second, Claimants 3 and 4 contend that those assurances were material to the Company and its decision to enter into the settlement because the Company would not have settled if there was a risk that. Third, Claimants 3 and 4 contend that the materiality of the purported assurances is evidenced by the fact that the Company "presumably" communicated to the SEC about the requested assurances before agreeing to sign off on the settlement. Finally, Claimants 3 and 4 contend that the Company must have sought these assurances following a ("News Article")

## II. Analysis

### A. Claimant 1

The record demonstrates that Claimant 1 voluntarily provided original information to the Commission that caused Office staff to open an investigation that led to the successful enforcement of the Covered Action. As relevant here, information leads to the success of an enforcement action if it: (1) was "sufficiently specific, credible, and timely to cause the staff to commence an examination, open an investigation... or to inquire concerning different conduct as part of a current... investigation, and the Commission brought a successful judicial or administrative action based in whole or in part on conduct that was the subject of [this] information" or (2) significantly contributed to the success of a Commission judicial or administrative enforcement action.<sup>9</sup> Claimant 1 voluntarily submitted a tip to the Commission in that alleged violations at the Company and

<sup>9</sup> See Exchange Act Rule 21F-4(c)(1), (2), 17 C.F.R. § 240.21F-4(c)(1), (2). See also Order Determining Whistleblower Award Claims, Exch. Act Rel. No. 85412, 2018 SEC LEXIS 615, at \*16 (Mar. 26, 2019); Order Determining Whistleblower Award Claims, Exch. Act Rel. No. 82897, 2018 SEC LEXIS 750, at \*16 (Mar. 19, 2018).

violations at certain of the Company's <sup>Redacted</sup>  
<sup>Redacted</sup> The tip caused <sup>Redacted</sup> Office staff to open the investigation in the Covered Action, and the charges brought by the Commission in the Covered Action were based, in part, on the conduct alleged by Claimant 1 in the <sup>Redacted</sup> tip. Accordingly, Claimant 1 qualifies for a whistleblower award.

The record further demonstrates that Claimant 1 also voluntarily provided the original information that led to the successful enforcement of the Covered Action to the Other Agency, and that this information led to the successful enforcement of the Related Actions.<sup>10</sup>

Applying the award criteria specified in Rule 21F-6 of the Exchange Act to the specific facts and circumstances here, we find the proposed award amount is appropriate.<sup>11</sup> In reaching that determination, we positively assessed the following facts: (1) Claimant 1's information was significant in that it caused Commission staff and Other Agency staff to open investigations and alerted the staff to wrongdoing <sup>Redacted</sup> (2) there is a close nexus between Claimant 1's information and the charges brought in the Covered Action concerning <sup>Redacted</sup> (3) Claimant 1 provided substantial and ongoing assistance to the <sup>Redacted</sup> Office staff throughout the investigation, which saved a considerable amount of time and resources; (4) Claimant 1 suffered serious personal and professional hardships as a result of Claimant 1's whistleblowing activities; and (5) Claimant 1 internally reported the concerns. The determination also reflects that a significant portion of the conduct charged in the Commission and Related Actions related to <sup>Redacted</sup> <sup>Redacted</sup> about which Claimant 1 provided limited information.

## B. Claimant 2

The record, which includes a supplemental declaration from the supervisory attorney in the <sup>Redacted</sup> Office responsible for the Covered Action investigation ("Supplemental Declaration") and a declaration from the <sup>Redacted</sup> Office attorney who initially reviewed Claimant 2's tip ("<sup>Redacted</sup> Office Declaration"), which we credit, demonstrates that Claimant 2's information does not satisfy Rule 21F-4(c)(1) as the investigation was opened based on Claimant 1's information, not Claimant 2's information. Claimant 2's information also does not satisfy

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<sup>10</sup> See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1); Exchange Act Rule 21F-3(a) and (b), 17 C.F.R. § 240.21F-3(a), (b). See also *In the Matter of Claim for Award*, Rel. No. 34-84046 (Sept. 6, 2018) (for a whistleblower to obtain an award in connection with a potential related action, the whistleblower must "demonstrate [that he or she] directly (or through the Commission) voluntarily provided the governmental agency, regulatory authority or self-regulatory organization the same original information that led to the Commission's successful covered action, and that this information led to the successful enforcement of the related action.") (citing Exchange Act Rule 21F-11(c)).

<sup>11</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.

Rule 21F-4(c)(2) because his/her information did not significantly contribute to the success of the Covered Action.

Although Claimant 2's information was submitted to the Commission nearly a year before the opening of the Covered Action investigation, <sup>Redacted</sup> Office staff determined that Claimant 2's tip and supplemental submissions were not compelling enough to open an investigation. The <sup>Redacted</sup> Office staff did not share Claimant 2's tip or supplemental submissions with <sup>Redacted</sup> Office staff. Claimant 2's information did not cause the opening of the Covered Action investigation, which was opened based on information submitted to <sup>Redacted</sup> Office staff in <sup>Redacted</sup> by Claimant 1, who provided much more detailed allegations concerning <sup>Redacted</sup>

<sup>Redacted</sup> all of which were supported by compelling <sup>Redacted</sup> documentation. The Supplemental Declaration confirms that Claimant 2's information was not used in the decision to open the investigation, and the <sup>Redacted</sup> Office Declaration confirms that the <sup>Redacted</sup> Office staff had no involvement in the decision to open the Covered Action investigation.

Claimant 2's information also did not significantly contribute to the success of the Covered Action. <sup>Redacted</sup> Office staff did not learn of Claimant 2's allegations until <sup>Redacted</sup> approximately three years after the opening of the investigation. Although <sup>Redacted</sup> Office staff spoke with Claimant 2's counsel, they had already learned of the details concerning <sup>Redacted</sup> from other sources. The staff ultimately did not recommend charging the <sup>Redacted</sup> conduct. The <sup>Redacted</sup> Office staff confirmed that, as a result, none of the information provided by Claimant 2 was used in, or had any impact on, the charges brought by the Commission against the Company. Similarly, although the Other Agency reviewed Claimant 2's information after it opened its investigation, the Other Agency determined not to include any charges related to <sup>Redacted</sup> in the <sup>Redacted</sup> actions. Finally, the Supplemental Declaration and <sup>Redacted</sup> Office Declaration confirm that Claimant 2's information was not used in formulating the <sup>Redacted</sup> Office staff's first request letter to the Company in <sup>Redacted</sup>. The letter was drafted exclusively by <sup>Redacted</sup> Office staff and was based on information provided by Claimant 1. At the time the letter was drafted, <sup>Redacted</sup> Office staff had no knowledge of Claimant 2's information.

Accordingly, because Claimant 2's information was not used in and had no impact on the Covered Action, the information did not lead to the success of the Covered Action.<sup>12</sup>

### C. Joint Claimants 3 and 4

The record demonstrates that Claimant 3's and Claimant 4's information does not satisfy Exchange Act Rule 21F-4(c)(1) as the investigation was opened based on Claimant 1's information, not the information submitted by Claimants 3 and 4.

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<sup>12</sup> Claimant 2's related action award claim is also denied because he/she is not eligible for an award in the Commission's Covered Action.

The information submitted by Claimants 3 and 4 also did not significantly contribute to the success of the Covered Action pursuant to Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2). Claimant 3 and 4's information, which was received by Redacted Office staff several years after the investigation was opened, related to alleged violations in Redacted conduct which was not charged in the Covered Action.

In response to Claimant 3's and Claimant 4's reconsideration request, Redacted Office staff confirmed in the Supplemental Declaration that the information provided by Claimants 3 and 4 did not impact (i) the investigation; (ii) the charges brought in the Covered Action; (iii) the settlement negotiations; or (iv) the relief ultimately obtained in the matter. The arguments set forth by Claimants 3 and 4 that their information was material to settlement negotiations are premised on unsupported speculation about communications between the Company and Redacted Office staff. Claimants 3 and 4 appear to concede that their information did not actually advance the investigation, which was focused on the Company's conduct Redacted. Rather, they contend that their information caused the Company to seek assurances from the Redacted Office staff that staff would not investigate alleged misconduct Redacted as a condition of settlement, because they assume the Company would not want to face any lingering Redacted after settling. The Redacted Office staff, however, do not recall any communications with the Company in which the Company sought assurances from the Redacted Office staff that staff would not pursue an investigation into conduct Redacted.

Claimants 3 and 4 further contend that the Company must have sought these assurances following the News Article concerning Redacted

Redacted This speculation is entirely unsupported by the record. Rather, the record reflects that over a year before Claimants 3 and 4 submitted their tip to the Commission,

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The Redacted Office staff also confirmed that by the time Claimants 3 and 4 submitted their tips, the investigation was substantially complete and the Redacted Office staff had made a determination not to pursue an investigation into Redacted. Further, the settlement negotiations between the Redacted Office staff and the Company were completed by the time the News Article was published. Because Claimant 3's and Claimant 4's information had no impact on the investigation, settlement negotiations, or resulting charges, their information did not "lead to" the success of the Covered Action.<sup>13</sup>

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<sup>13</sup> Claimant 3's and Claimant 4's related action award claims are also denied because they are not eligible for an award in the Commission's Covered Action.

### **III. Conclusion**

Accordingly, it is hereby ORDERED that Claimant 1 shall receive an aggregate award of over \$114 million, which is equal to <sup>Redacted</sup> percent ( % ) of the monetary sanctions collected in the Covered Action and in the Related Actions.

It is further ORDERED that Claimant 2's, Claimant 3's and Claimant 4's whistleblower award applications in the Covered Action be, and hereby are, denied. It is further ORDERED that Claimant 2's, Claimant 3's and Claimant 4's whistleblower award applications for a related action award be, and hereby are, denied.

By the Commission.

Vanessa A. Countryman  
Secretary