UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 100252 / May 31, 2024

WHISTLEBLOWER AWARD PROCEEDING
File No. 2024-19

In the Matter of the Claims for an Award

in connection with

Redacted
Redacted
Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff ("CRS") issued Preliminary Determinations recommending that Redacted ("Claimant 1") receive a whistleblower award of *** percent (*** %) of the amounts collected in the above-referenced Covered Action ("Covered Action"), which would result in a payment of more than $3.4 million. The CRS also preliminarily recommended that the joint award claim of Redacted ("Claimant 3") and Redacted ("Claimant 4") be denied, and that the award claims of Redacted ("Claimant 5") and Redacted ("Claimant 7") be denied. Claimants 3, 4, 5 and 7 filed timely responses contesting the Preliminary Determinations, and Claimant 1 provided written notice of Claimant 1's decision not to contest the Preliminary Determinations.[1] For the reasons discussed below, the CRS's recommendations are adopted with respect to Claimants 1, 3, 4, 5 and 7.

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[1] The CRS also preliminarily determined to recommend denying an award to three additional claimants who did not file a written response. Accordingly, those claimants have failed to exhaust administrative remedies and the preliminary denial of their award claims have become the Final Order of the Commission pursuant to Exchange Act Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f).

I. Background

A. The Covered Action

On Redacted, the Commission charged Redacted, together with a group of individuals and associated entities, for their participation in a Redacted scheme that generated over *** million from Redacted. Redacted. According to the Commission's complaint, from Redacted, a group of Redacted ("Company"), Redacted Redacted Redacted Redacted Redacted. According to the Commission's complaint, Redacted Redacted

The Commission's complaint alleged that Redacted, along with several individuals and entities (collectively, "Defendants"), violated the federal securities laws, Redacted Redacted Redacted

The Commission obtained final judgments with respect to the Defendants, which totaled more than $1 million in monetary sanctions.

On Redacted, the Office of the Whistleblower ("OWB") posted the relevant Notice of Covered Action on the Commission's public website inviting claimants to submit whistleblower award applications within 90 days.[2] Claimants 1, 3, 4, 5 and 7 filed timely whistleblower award claims.

B. The Preliminary Determinations

The CRS issued Preliminary Determinations[3] recommending that Claimant 1 receive a whistleblower award equal to *** percent (*** %) of the monetary sanctions collected in the Covered Action.

The CRS preliminarily determined to recommend that the joint award claim of Claimants

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[2] *See* Exchange Act Rule 21F-10(a), 17 C.F.R. § 240.21F-10(a).

[3] *See* Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d).

3 and 4 be denied because they did not provide original information that "led to" the success of the Covered Action as required under Exchange Act Rule 21F-4(c). Enforcement staff responsible for the Covered Action ("Enforcement Staff") declared that they did not receive or review any information from Claimants 3 and 4 during the investigation nor had any communications with them. Claimants 3 and 4's Redacted TCR included an Redacted presentation, which had been prepared based on publicly available information and presented to an Assistant Director in the Home Office. The Enforcement staff' declaration further states that while their TCR referenced a couple of the Defendants in the Covered Action, the alleged conduct and specific issues identified in the TCR were not related to the investigation or Covered Action.

The CRS preliminarily determined to recommend that the award claim of Claimant 5 be denied because Claimant 5 failed to provide original information that "led to" the success of the Covered Action. The CRS also determined that Claimant 5 did not provide "original information" to the Commission because the information was based on publicly available materials and did not contain "independent analysis." While Enforcement staff responsible for the Covered Action received two of Claimant 5's three tips, the information did not cause staff to open the investigation, inquire into new conduct or significantly contribute to the success of the Covered Action. Enforcement staff responsible for the Covered Action had no communications with Claimant 5.

The CRS preliminarily determined to recommend that Claimant 7's award claim be denied because Claimant 7 did not provide original information that "led to" the success of the Covered Action. Claimant 7 submitted a whistleblower tip to the Commission in Redacted *** . Claimant 7's tip generally alleged that certain of the Defendants were orchestrating a Redacted , but much of the submission was based on publicly available materials. After the *** tip, Claimant 7 submitted several more complaints regarding the Defendants, which were received by Covered Action staff. While Claimant 7 submitted numerous emails to the Enforcement staff assigned to the Covered Action investigation over the years, the information was general in nature and duplicative of information Enforcement already had in their possession. Furthermore, much of the information was based on Claimant 7's own research into publicly available information, of which staff were already aware and the information did not include any insight separate and apart from what was reflected in the publicly available materials that was useful to the Enforcement staff. According to responsible Covered Action staff, Claimant 7 provided no new information that was used by Enforcement staff during the investigation or in bringing the successful Covered Action.

The Preliminary Determination also specifically addressed Claimant 7's claim in his/her whistleblower award application that he/she had submitted information to the Commission jointly with Claimant 1. The CRS rejected Claimant 7's argument, finding that the record did not support that Claimant 1 and Claimant 7 had submitted information to the Commission jointly. Notably, Claimant 1's TCRs were submitted to the Commission on his/her own, and not

with Claimant 7. Further, Claimant 1 attended the Redacted meeting with Enforcement staff responsible for the Covered Action during which Claimant 1 provided valuable new information based on Claimant 1's firsthand knowledge and experiences. Claimant 7 was not in attendance at that meeting.

Claimants 3, 4, 5 and 7 all submitted timely written responses contesting the Preliminary Determinations.[4]

II. Claimant 1 Analysis

Claimant 1 voluntarily provided original information to the Commission that led to the successful enforcement of the referenced Covered Action pursuant to Section 21F(b)(1) of the Exchange Act and Rule 21F-3(a) promulgated thereunder. Claimant 1 submitted whistleblower tips to the Commission in *** and ***. Enforcement staff opened the Covered Action investigation based on a referral from staff in the Division of Examinations ("Exams"), and not because of information submitted by any of the claimants. However, during the course of the investigation, Claimant 1 met with Enforcement staff in Redacted and provided new, helpful information that substantially advanced the investigation. Following the meeting, Enforcement staff issued a document subpoena to Claimant 1 in Redacted, to which Claimant 1 responded in Redacted, and provided useful additional evidence to the staff. As such, we find that Claimant 1 voluntarily provided original information that significantly contributed to the success of the Covered Action.

We agree that Claimant 1 should receive an award of *** percent (***%) of the monetary sanctions collected, or to be collected, in the Covered Action. In determining the amount of award, we considered the following factors set forth in Rule 21F-6 of the Exchange Act as they apply to the facts and circumstances of Claimant 1's application: (i) the significance of information provided to the Commission; (ii) the assistance provided in the Covered Action; (iii) the law enforcement interest in deterring violations by granting awards; (iv) participation in internal compliance systems; (v) culpability; (vi) unreasonable reporting delay; and (vii) interference with internal compliance and reporting systems. Claimant 1 made two submissions to the SEC, and met with staff in Redacted, during which he/she provided valuable information about the Company and the roles of various individuals. Specifically, Claimant 1 described various meetings he/she participated in with certain Defendants and other individuals, described the Redacted Redacted, and the events leading up to the Redacted, as well as the Redacted that occurred with the Company. Claimant 1 has no negative factors. Based on the significance of the information provided, the assistance provided, the hardship he/she suffered as a result of his/her whistleblowing activities, and the high law enforcement interests in this matter, we believe that a *** % award to Claimant 1 is appropriate.

[4] *See* Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

III. Claimants 3 and 4 Response and Analysis

In their request for reconsideration, Claimants 3 and 4 make the following principal arguments: (1) the Enforcement attorney who provided the declaration in the matter ("Initial Declaration") did not have personal knowledge of the investigation's opening, and that it is possible that the investigation was opened, in part, based on their information; (2) the Initial Declaration does not address additional communications Claimants 3 and 4 had with the Commission staff, including a Redacted meeting or Redacted email; and (3) the Initial Declaration was signed two weeks after the Preliminary Determination.

The record demonstrates that Claimants 3 and 4 did not provide original information that led to a successful enforcement action pursuant to Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a) and 21F-4(c) thereunder, because the information Claimants 3 and 4 provided did not: (1) under Rule 21F-4(c)(1) of the Exchange Act, cause 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 Claimants 3 and 4's information, or (2) significantly contribute to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act.

Claimants 3 and 4 did not provide information that caused the Covered Action investigation to open. The Enforcement attorney who provided the Initial Declaration provided a supplemental declaration ("Supplemental Declaration"), which we credit, clarifying that she was involved in the opening of the Covered Action investigation and remained the primary Enforcement attorney through the filing of the Covered Action. The Covered Action investigation was opened in Redacted based on an Exams referral, and not because of information provided by Claimants 3 and 4. Nor was the Exams referral based on Claimants 3 and 4's information. While Claimants 3 and 4 suggest in their reconsideration request that the investigation was opened based in part on a past Redacted investigation that they may have helped open, the record reflects that the Covered Action investigation was opened based on an Exams referral.

Claimants 3 and 4 also did not provide information that caused Enforcement staff responsible for the Covered Action to inquire into new conduct or that significantly contributed to the success of the Covered Action. The Supplemental Declaration further clarifies that Enforcement staff responsible for the Covered Action were not involved in Claimants 3 and 4's meetings with Home Office staff in Redacted, and did not receive any of Claimants 3 and 4's information, including the Redacted TCR or Redacted email. The Enforcement staff responsible for the Covered Action never reviewed or received information from Claimants 3 and 4. As such, Claimants 3 and 4 did not submit information that

"led to" the success of the Covered Action.[5]

IV. Claimant 5's Response and Analysis

In his/her request for reconsideration, Claimant 5 principally argues that: (1) his/her TCRs contained "independent analysis" because they included additional evaluation and assessment not readily apparent from the face of the public documents, as demonstrated by the fact that the SEC did not know about the Redacted scheme until his/her tips; (2) two of his/her tips were submitted before the Covered Action investigation opened, so he/she must have alerted the SEC to the conduct; (3) if his/her tips were not used then the SEC must ignore tips or fail to reasonably search for them in the TCR system; and (4) the staff declaration is deficient because one person cannot speak for a variety of offices and staff personnel.

First, Claimant 5's information did not cause the investigation to open, did not cause staff to inquire into different conduct, and did not significantly contribute to the success of the Covered Action. While two of his/her tips were submitted prior to the opening of the Covered Action investigation, the record reflects that staff did not open the Covered Action investigation based on Claimant 5's information. Rather, staff opened the investigation based on an Exams referral, and the Exams referral was not based on Claimant 5's information. While Enforcement staff responsible for the investigation received and reviewed Claimant 5's second TCR more than one year before opening the investigation, the staff closed the tip and did not use it in any way. Finally, staff received Claimant 5's third tip during the investigation, but the tip did not contain any new or helpful information. Staff responsible for the Covered Action had no communication with Claimant 5.

Second, Claimant 5's contention that staff must have ignored his/her tips also is not supported by the record. As set forth in the Initial Declaration, Claimant 5's first tip was assigned to another regional office in connection with another matter, and his/her second and third tips were reviewed by Enforcement staff responsible for the Covered Action, but were determined not to contain useful information.

Third, the staff declarant specifically stated that the Initial Declaration was being made based on a review of documents in the investigative file as well as communications with other Commission staff. The Whistleblower rules do not require separate declarations from each

[5] Claimants 3 and 4 allege that the Preliminary Determination was procedurally deficient because the Initial Declaration was signed after issuance of the Preliminary Determination. The unsigned and signed versions of the Initial Declaration are identical except for the signature and markings such as "draft" and "privileged" such that the information relied upon by the CRS in its Preliminary Determination was not affected by the signature being affixed after the CRS met to approve the Preliminary Determination. *See Order Determining Whistleblower Award Claim*, Exchange Act Release No. 97529 at 3 n.2 (May 19, 2023); *Order Determining Whistleblower Award Claims*, Exchange Act Release No. 96669 at 5 n.13 (Jan. 17, 2023); *Order Determining Whistleblower Award Claims*, Exchange Act Release No. 94743 at 2 n.6 (Apr. 18, 2022).

person across the Commission who ever had any involvement in the Covered Action or review of a claimant's tip, and we decline Claimant 5's suggestion to impose such a requirement.

Finally, while it is not necessary for the Commission to determine whether Claimant 5's information contained "independent analysis" because the record shows that his/her information did not "lead to" the success of the Covered Action, we note that his/her tips primarily contain publicly available information with little or no evaluation or examination.

V. Claimant 7's Response and Analysis

Claimant 7 principally argues in response to the Preliminary Determination that he/she should be treated as a joint whistleblower with Claimant 1.[6] Claimant 7 admits that he/she did not submit a TCR jointly with Claimant 1 but argues that there is no legal requirement for joint whistleblowers to share one TCR. Claimant 7 also admits that he/she was not present at the Redacted meeting between Claimant 1 and Enforcement staff, but argues that there is no requirement that they both be physically present at the meeting in order to be joint whistleblowers. Claimant 7 also admits that he/she and Claimant 1 submitted separate whistleblower award applications.

According to Claimant 7, during Redacted, Claimant 7 worked together with Claimant 1 to gather information about the Defendants' Redacted activities and that their collaboration was apparent to OWB and to Enforcement staff on the Covered Action because they copied each other on correspondence with the SEC. In connection with the Redacted meeting, Claimant 1 told Enforcement staff that they should contact Claimant 7.[7]

Following Claimant 7's request for reconsideration, OWB staff, along with the Office of General Counsel, solicited additional information and documents from Claimant 1 and Claimant 7 to clarify their relationship.

Pursuant to Exchange Act Rule 21F-2, a "whistleblower" is an individual, acting alone or jointly with others, who provides the Commission with information pursuant to the procedures in Rule 21F-9 that relates to a possible violation of the federal securities laws that has occurred, is ongoing, or is about to occur. We recently considered whether two individuals acted as joint

[6] Claimant 7 was Redacted for the Company until Redacted Redacted.

[7] *See, e.g.*, Email from Claimant 1 to Enforcement staff, copying Claimant 7, Redacted ("We have a lot of information to provide the SEC," Claimant 7 "will likely be willing to provide the SEC important information," and "Please ask your SEC counsel to speak to [Claimant 7] on Wednesday."); Email from Claimant 7 to Enforcement staff, copying Claimant 1, Redacted ("[Claimant 1] tells me that you met with [him/her] for over three hours yesterday. Thank you.").

whistleblowers.[8] We concluded that the two claimants, who had filed separate whistleblower award applications under separate counsel, were joint whistleblowers because they presented themselves jointly to the Commission when providing their information. Enforcement staff met with both claimants, who had the same counsel at the time, during which new, helpful information was provided that significantly contributed to the success of the enforcement action. After the meeting, their counsel wrote a letter to Enforcement staff stating that the two individuals were part of a "team" that provided the information to the Commission. The Commission determined that "[w]hatever Claimant 1 and Claimant 2's private understanding may have been, and regardless of their apparent subsequent falling out, the record is clear that they presented themselves to the Commission as joint whistleblowers when they provided their information to the Commission in Redacted ."[9] On appeal, the D.C. Circuit denied the petition for review, concluding that the "SEC had substantial evidence that [the two claimants] acted jointly when providing the information to the Commission" and that "[t]he SEC whistleblower statute does not ask who developed the original information that led to a successful resolution of a covered action; instead, it asks who provided that information to the Commission."[10]

As such, the touchstone for determining whether two individuals acted as joint whistleblowers turns on how the individuals presented themselves when providing the information to the Commission. Here, the record supports the conclusion that Claimant 1 and Claimant 7 did not present themselves to Commission staff as joint whistleblowers. Only Claimant 1, and not Claimant 7, attended the Redacted meeting with Enforcement staff and provided useful information that advanced the investigation. Claimant 1, not Claimant 7, received the subpoena from Enforcement staff, and Claimant 1, not Claimant 7, provided helpful documents in response. While Claimant 1 and Claimant 7 may have copied each other at times on their correspondence with Commission staff, they did not represent themselves as a unit or a team. According to a supplemental declaration provided by responsible Enforcement staff, which we credit, Claimant 1 and Claimant 7 did not present themselves as providing information jointly or as a team. At no point during the investigation was Enforcement staff informed by Claimant 7 or Claimant 1, or by Claimant 1's counsel, that they were acting as joint whistleblowers or providing the information jointly. That Claimant 7 may have assisted Claimant 1 in preparing for the Redacted meeting or in responding to the Redacted subpoena is of no moment, as they did not present themselves as a unit when providing the information to the Commission staff.

In his/her response, Claimant 7 has identified certain evidence that in Claimant 7's view shows he/she and Claimant 1 provided information jointly to the Commission. For example,

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[8] *Order Determining Whistleblower Award Claims*, Rel. No. 34-91902 (May 17, 2021).

[9] *Id.*

[10] *Johnston v. Securities and Exchange Commission*, 49 F.4th 569, 578 (D.C. Cir. 2022).

there are emails between Claimant 1 and Claimant 7 in Redacted discussing how to split any potential whistleblower award.[11] Claimant 7 also provided an email from Claimant 1 to Claimant 7 dated Redacted, concerning the document subpoena that Enforcement staff issued to Claimant 1, which stated, "The subpoena sent to me by the SEC is a highly confidential document. I sent you a copy so that you can assist me to respond to their request for documents and information." The email further refers to Claimant 7 as Claimant 1's "co-beneficiary, if there is an [*sic*] Whistle Blower's Award."

We acknowledge that, if viewed in isolation, this evidence could support Claimant 7's view that he/she and Claimant 1 acted jointly. But when viewed in the context of the entire administrative record, we believe that the record evidence taken as a whole weighs in favor of finding that Claimant 1 and Claimant 7 provided information individually, not jointly, in their interactions with the staff. Moreover, according to Claimant 1, although they did discuss working together to obtain a whistleblower award from the Commission, this never resulted in any agreement between them. Claimant 7 was also unable to produce an executed agreement between Claimant 1 and Claimant 7. Finally, Claimant 1 presented his/her information to the Commission, including his/her Form TCRs, subpoena responses and his/her Form WB-APP through his/her own attorney. Thus, the Commission finds, based on the entirety of the record, that Claimant 1 and Claimant 7 were not joint whistleblowers.

In sum, Claimant 1 and Claimant 7 were not joint whistleblowers, because, *inter alia*, they submitted separate TCRs years apart and they did not present themselves as providing the information jointly when communicating with Commission staff. The basis for Claimant 1's award is the helpful information that he/she provided in connection with the Redacted meeting, where Claimant 7 was not present, and in connection with the response to the document subpoena, which was provided by Claimant 1 and not Claimant 7.

Finally, Claimant 7 did not individually provide original information that led to the success of the Covered Action. Contrary to the helpful information provided by Claimant 1, Enforcement staff could not identify any new, useful information that Claimant 7 provided to the staff that substantially advanced the investigation. While Enforcement staff received various emails and other correspondence from Claimant 7, the information was not helpful, and staff never met with Claimant 7. As such, Claimant 7's information did not lead to the success of the Covered Action.

VI. Conclusion

Accordingly, it is ORDERED that Claimant 1 receive an award of *** percent (*** %) of

[11] Claimant 7 discusses that "we will work together to apply for one or more whistleblower awards and we will split the proceeds of any such award(s) equally…" In response, Claimant 1 states that he/she agrees with two additional conditions, specifically that he/she be reimbursed for legal expenses before dividing the proceeds Redacted Redacted Redacted

the monetary sanctions collected or to be collected in the Covered Action and that Claimants 3, 4, 5 and 7's award applications be denied.

By the Commission.

Vanessa A. Countryman

Secretary