

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99230 / December 22, 2023

WHISTLEBLOWER AWARD PROCEEDING
File No. 2024-6

In the Matter of the Claims for Award

in connection with

Redacted

Notice of Covered Action ^{Redacted}

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued a Preliminary Determination in connection with ^{Redacted} (“Covered Action”) recommending that: (1) ^{Redacted} (“Claimant 1”); (2) ^{Redacted} (“Claimant 2”); and (3) joint claimants ^{Redacted} (“Claimant 3”) and ^{Redacted} (“Claimant 4”) (collectively, “Joint Claimants”) all be denied whistleblower awards for the Covered Action and any related actions.¹ Claimant 1, Claimant 2, and Joint Claimants filed timely responses contesting the Preliminary Determination. For the reasons discussed below, Claimant 1’s, Claimant 2’s, and Joint Claimants’ award claims are denied.²

I. Background

A. The Covered Action

On ^{Redacted} the Commission brought the Covered Action, instituting cease-and-desist proceedings against ^{Redacted} (“Company”). The Covered Action concerned

¹ The CRS also preliminarily determined to recommend that the award application of one other claimant be denied. That claimant did not submit a request for reconsideration and, as such, the Preliminary Determination with respect to that claimant became the Final Order of the Commission, pursuant to Rule 21F-10(f).

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

violations of [Redacted] by the Company. Specifically, from in or around [Redacted] through in or around [Redacted] Company subsidiaries [Redacted]. As a result, those Company subsidiaries [Redacted] learned of specific [Redacted] the Company did not either sufficiently investigate the allegations or sufficiently mitigate [Redacted].

The Company also [Redacted] (“Other Agency”) that [Redacted] relating to certain findings in the Covered Action (“Other Action”). In the Covered Action, the Commission did not impose a civil penalty based upon the Company’s payment of a [Redacted] monetary fine as part of the Other Action. Instead, in the Covered Action, the Company agreed to pay disgorgement of [Redacted] and prejudgment interest of [Redacted] for a total payment of [Redacted] to the Commission.

On [Redacted] the Office of the Whistleblower (“OWB”) posted the Notice of Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days.³ Claimant 1, Claimant 2, and Joint Claimants filed timely whistleblower award claims.

B. The Preliminary Determination as to Claimant 1

On [Redacted] the CRS issued a Preliminary Determination⁴ recommending that Claimant 1’s claim be denied.⁵ The Preliminary Determination recommended a denial because Claimant 1 did not provide information that led to the successful enforcement of the Covered Action. While Staff reviewed the information provided by Claimant 1, the Covered Action was neither based, in whole or in part, on that information, nor did the information significantly contribute to the success of the Covered Action.

³ See Exchange Act Rule 21F-10(a), 17 C.F.R. § 240.21F-10(a).

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

⁵ The record supporting the Preliminary Determination included the declaration (“Declaration”) of one of the Division of Enforcement (“Enforcement”) attorneys (“Staff”) who was assigned to the investigation that led to the Covered Action (“Investigation”). See Exchange Act Rule 21F-12(a); 17 C.F.R. § 240.21F-12(a).

C. Claimant 1’s Response to the Preliminary Determination

Claimant 1’s reconsideration request consists of a single email sent to OWB that states: “I am contesting the Preliminary Decision in the [Covered Action] matter.” Claimant 1 has provided no explanation as to why he/she believes the Preliminary Determination was erroneous.

D. The Preliminary Determination as to Claimant 2

On ^{Redacted} the CRS issued a Preliminary Determination⁶ recommending that Claimant 2’s claim be denied for three reasons.⁷ *First*, the Preliminary Determination recommended a denial because Claimant 2 did not provide information that led to the successful enforcement of the Covered Action. Staff only received limited information from Claimant 2, and Staff did not have any communications with Claimant 2. None of Claimant 2’s information was used in, nor had any impact on, the charges brought by the Commission in the Covered Action. *Second*, the Preliminary Determination recommended a denial because Claimant 2’s submission of information to the Commission was not made voluntarily. Before coming forward to the Commission, Claimant 2 had received an inquiry from a Congressional Oversight Committee (“Committee”) that related to the same subject matter as Claimant 2’s later submission to the Commission. *Third*, the Preliminary Determination recommended a denial because Claimant 2 did not provide original information that led to the successful enforcement of the Covered Action because Claimant 2’s information was already known to the Commission.

E. Claimant 2’s Response to the Preliminary Determination

In response, Claimant 2 makes several arguments. Claimant 2 states that he/she voluntarily provided information and supporting documentation concerning certain of the Company’s ^{Redacted} to ^{Redacted} in early ^{***} which in turn performed an investigation. Claimant 2 suggests that the Company only self-reported its conduct to the Commission after ^{Redacted} interviewed a Company executive and showed him/her some of the documents that Claimant 2 had provided to ^{Redacted} Claimant 2 suggests that the documents he/she provided to ^{Redacted} led to the publication of an article in ^{Redacted} about the misconduct (“Article”) as well as additional follow-up articles. Claimant 2 alleges that he/she was the “original source” of the Article. Claimant 2 alleges that because the Article caused the Commission to issue a formal order (“Formal Order”), the Article was significant, material, and saved Staff valuable resources during the Investigation; Claimant 2 also alleges that the Article’s information significantly contributed to the success of the Covered Action.

⁶ See Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d).
⁷ The record supporting the Preliminary Determination included the Declaration. See Exchange Act Rule 21F-12(a); 17 C.F.R. § 240.21F-12(a).

Claimant 2 argues that the Preliminary Determination erred in finding that the TCR he/she submitted to the Commission in ^{Redacted} was not made voluntarily. Claimant 2 contends that he/she voluntarily provided original information to the Commission when the Article was published, months before the Committee contacted him/her in late ^{***}. Claimant 2 also states that his/her counsel first contacted the Other Agency in ^{Redacted} offering to supply Claimant 2's information and cooperation. Claimant 2 allegedly made various subsequent attempts to provide his/her information to the Other Agency, culminating in Claimant's submission of information and supporting documentation to the Other Agency in ^{Redacted}. Claimant 2 alleges that he/she thus satisfies Rule 21F-4(a)(2) because he/she voluntarily offered to provide the same information to an authority of the federal government prior to receiving a request, inquiry, or demand for information from the Committee.

Claimant 2 believes that his/her claim for award was preliminarily denied because the Commission did not receive exhibits and discs that Claimant 2 purportedly sent to the Commission in support of his/her ^{Redacted} TCR. Claimant 2 asserts that even if the Commission never received the exhibits and discs, it would not matter because Staff had already read the Article, which led to the Formal Order. Claimant 2 states that if the Commission received his/her TCR but then decided to take no further action in response to it, then Claimant 2's constitutional rights have been violated.

Moreover, Claimant 2 argues that the materials that he/she received in response to his/her request for the record materials that formed the basis for the Preliminary Determination are insufficient. Claimant 2 has asked OWB to provide him/her with numerous additional documents, including, among others: the entire TCR that the CRS relied upon in issuing the Preliminary Determination; a copy of the TCR log regarding Claimant 2's tip; all material that the Company provided to the Commission from ^{Redacted} through the end of ^{***}; a copy of the Formal Order; and the other claimants' whistleblower award applications. Claimant 2 has also requested that OWB dismiss the confidentiality agreement that he/she and OWB entered into when OWB provided Claimant 2 with the record materials. Claimant 2 asserts that this is necessary so that his/her and OWB's acts and omissions can be scrutinized by government agencies and the general public. Claimant 2 argues that OWB has refused to make his/her claim for award transparent and open to public scrutiny, thereby chilling his/her First Amendment rights.

Claimant 2 argues that if he/she has failed to meet any of the criteria for award eligibility under the whistleblower program rules ("Rules"), the Commission should invoke Rule 21F-8(a) to waive any non-compliance. Claimant 2 asserts that extraordinary circumstances exist due to the Company's extensive retaliation against him/her, including terminating his/her employment and bringing suit against him/her, which has resulted in Claimant 2 suffering hardship.

In all, Claimant 2 alleges that but for his/her information: (1) the Company's misconduct would not have been revealed through ^{Redacted} (2) the Company would not have reported its internal investigation to the government; and (3) the government would not have launched investigations and brought actions against the Company for its misconduct.

F. The Preliminary Determination as to Joint Claimants

On ^{Redacted} the CRS issued a Preliminary Determination⁸ recommending that Joint Claimants' claim be denied.⁹ The Preliminary Determination recommended a denial because Joint Claimants did not provide information that led to the successful enforcement of the Covered Action. While Staff reviewed the information provided by Joint Claimants, the Covered Action was neither based, in whole or in part, on that information, nor did the information significantly contribute to the success of the Covered Action.

G. Joint Claimants' Response to the Preliminary Determination

In response, Joint Claimants make several arguments. They allege that the Declaration was improperly dismissive of Claimant 3's information because Claimant 3 submitted his/her tip to the Commission only after the publication of the Article. Joint Claimants state that such a view is mistaken, as Claimant 3 actually submitted his/her tip to the Commission several days before the publication of the Article; further, the tip concerned different acts of bribery than what was detailed in the Article.

Joint Claimants assert that they provided extensive assistance to the Commission during the course of the Investigation, including ^{Redacted} for interviews and persuading and arranging for other witnesses ^{Redacted} to testify before the government. Along with submitting his/her initial tip, Claimant 3 also submitted a supplemental memorandum to the government that contained additional information about the alleged bribery scheme. Joint Claimants add that they took significant risks and faced substantial hardship in coming forward with their information. For instance, Claimant 3 was sued ^{Redacted} in an attempt to silence him/her, Claimant 3 was threatened with the filing of another lawsuit against him/her, and Claimant 3 was offered ^{Redacted} for his/her silence. Joint Claimants state that Staff was aware of the risks being taken by Claimant 3 and repeatedly expressed appreciation for Claimant 3's cooperation and assistance.

⁸ See Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d).

⁹ The record supporting the Preliminary Determination included the Declaration. See Exchange Act Rule 21F-12(a); 17 C.F.R. § 240.21F-12(a).

Joint Claimants maintain that the Declaration incorrectly concluded that their information did not advance the Investigation. They allege that such a conclusion is directly rebutted by a statement made by the Commission attorney who was in charge of the Investigation. Joint Claimants allege that this attorney remarked to Joint Claimants' counsel that while Staff did not determine the amount of awards, the attorney believed that Claimant 3's contribution as a whistleblower had been significant, and the attorney did not know of any reason why the government would not want to reward Claimant 3.

Joint Claimants argue that they provided original information to the Commission that was based on their independent knowledge and independent analysis. They allege that their information materially added to the information already known by the Commission and expanded the scope of the Investigation. In this way, their information purportedly caused the Commission to inquire concerning different conduct as part of the Investigation and also significantly contributed to the success of the Covered Action.

II. Analysis

A. Claimant 1

We deny an award to Claimant 1. 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 enforcement of a covered action.¹⁰ Claimant 1 did not provide the Commission with such information. Because Claimant 1 does not qualify for an award for the Covered Action, Claimant 1 is not eligible for a related action award.¹¹

The information that Claimant 1 provided to the Commission did not either (1) cause the Commission to commence an examination, open or reopen an investigation, or inquire concerning different conduct as part of a current Commission examination or investigation, and thereafter bring a successful Commission judicial or administrative action based, in whole or in part, on conduct that was the subject of Claimant 1's information;¹² or (2) significantly contribute to the success of a Commission judicial or administrative action.¹³ We credit the Declaration, provided under penalty of perjury, which stated that Staff reviewed the two tips that Claimant 1 submitted to the Commission. Claimant 1's tips contained LinkedIn connections for

¹⁰ Exchange Act Section 21F(b)(1), 15 U.S.C. §78u-6(b)(1).

¹¹ 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); Exchange Act Rule 21F-4(g) and (f); Exchange Rule 21F-11(a); *Order Determining Whistleblower Award Claims*, Release No. 34-4506 (Oct. 30, 2018); *Order Determining Whistleblower Award Claims*, Release No. 34-84503 (Oct. 30, 2018).

¹² *See* Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

¹³ *See* Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

a former Company employee who was a witness in the Investigation as well as LinkedIn connections for other individuals associated with the Company. Staff found that this information was not useful in providing any investigative leads; the individuals identified in Claimant 1's tips were either already known to Staff or not relevant to the Investigation. None of Claimant 1's information helped advance the Investigation. None of Claimant 1's information was used in, nor had any impact on, the charges in the Covered Action.

B. Claimant 2

We deny an award to Claimant 2. 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 enforcement of a covered action.¹⁴ Claimant 2 did not provide the Commission with such information. Because Claimant 2 does not qualify for an award for the Covered Action, Claimant 2 is not eligible for a related action award.¹⁵

The information that Claimant 2 provided to the Commission in ^{Redacted} did not either (1) cause the Commission to commence an examination, open or reopen an investigation, or inquire concerning different conduct as part of a current Commission examination or investigation, and thereafter bring a successful Commission judicial or administrative action based, in whole or in part, on conduct that was the subject of Claimant 2's information;¹⁶ or (2) significantly contribute to the success of a Commission judicial or administrative action.¹⁷ We credit the Declaration, provided under penalty of perjury, which confirms that none of the information provided by Claimant 2 helped advance the Investigation. None of Claimant 2's information was used in, nor had any impact on, the charges brought in the Covered Action.

According to the Declaration, the Investigation was not opened based upon the information provided by Claimant 2 directly to the Commission. In fact, Claimant 2 did not provide information to the Commission until ^{Redacted} several years after the Investigation was opened. Instead, in ^{Redacted} the Company self-reported possible violations ^{Redacted} and made certain other disclosures to Staff. In ^{Redacted} in response to the Company's disclosures, Staff opened a matter under inquiry ("MUI"); in ^{Redacted} Staff converted the MUI to the Investigation. In ^{Redacted} ^{***} published the Article, its first article regarding alleged ^{Redacted} involving the Company's ^{Redacted} subsidiary ("Subsidiary"). After reviewing the Article, Staff obtained the Formal Order.

¹⁴ Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

¹⁵ See *supra* note 11.

¹⁶ See Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

¹⁷ See Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

Claimant 2 alleges that his/her information was the impetus for investigation, the Article, the Company’s reporting to the Commission, the Investigation, and the subsequent Covered Action. Claimant 2 asserts that beginning in early *** —long before the Company came forward to the Commission—Claimant 2 began providing information and documentation to Redacted about Redacted Claimant 2 alleges that the Company only came forward to the Commission in Redacted after learning that Redacted was investigating Redacted and likely had substantial information about the misconduct. Even if such allegations were true, there is no basis to credit the opening of the Investigation to Claimant 2. Rule 21F-4(b)(7)’s “lookback” provision¹⁸ is inapplicable here because Claimant did not directly provide any information to any government agency before the Article was published.¹⁹ In fact, Claimant 2 states that he/she only provided information—which included two discs containing relevant documents—to the Other Agency for the first time in Redacted 20

¹⁸ Under Rule 21F-4(b)(7), if a claimant provides information to another authority of the federal government, and then provides the same information to the Commission pursuant to Rule 21F-9 within 120 days, then for purposes of evaluating the award claim, the Commission will consider the claimant to have provided the information as of the date the claimant made the original disclosure, report or submission to the other government authority.

¹⁹ Claimant 2’s argument that he/she actually provided original information to the Commission when the Article was published is erroneous. What matters is the time when a claimant provides information directly to the Commission or another authority of the federal government such as the Other Agency—not to an outside, third party such as Redacted. Further, Claimant’s citation to Rule 21F-4(b)(1)(ii) and 21F-4(b)(5) regarding “original information” and being an “original source” does not change the fact that the opening of the Investigation cannot be credited to Claimant 2. The Rules merely recognize that for a whistleblower submission to be considered “original information,” it must not already be known to the Commission from any other source unless the claimant is the original source of the information, nor must it be exclusively derived from the news media, unless the claimant is a source of the information. Even if Claimant 2 was the “original source” of the information contained in the Article, as Claimant 2 alleges, Claimant 2 did not submit that information to the Commission until over two years later; by that time, Claimant 2’s submission of information did not lead to the success of the Covered Action. Additionally, Claimant 2 states that when he/she provided his/her information to Redacted starting in early *** Claimant 2 was not aware of the Commission’s whistleblower program, which had only recently been established. Claimant 2 states that he/she only became aware of the Commission’s whistleblower program following conversations that Claimant 2 had with the Other Agency in Redacted. Claimant 2 states that had the Other Agency not advised Claimant 2 about the Commission’s whistleblower program, then Claimant 2 probably would not have submitted Claimant 2’s TCR. However, none of these purported circumstances change the fact that Claimant 2 is not eligible for an award. We have stated previously that a lack of awareness of the Commission’s whistleblower program does not rise to the level of an extraordinary circumstance under Rule 21F-8(a). *See, e.g.*, Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 72659, at 5 (July 23, 2014) (“Claimants have it well within their control to learn about the whistleblower program’s existence and its requirements . . . they simply need to visit the Commission’s web page, which prominently features the relevant information about the program. Their failure to do so does not warrant equitable relief . . .”).

²⁰ Claimant 2 states that his/her counsel contacted the Other Agency for the first time in Redacted offering to make Claimant 2 and the documents he/she possessed available to the Other Agency. However, the Other Agency did not initially respond to counsel’s offer of assistance. According to Claimant 2, he/she did not provide his/her information—including two discs containing relevant documents—to the Other Agency until Redacted

In his/her request for reconsideration, Claimant 2 focuses on the TCR he/she submitted to the Commission and the Commission's supposed failure to properly handle and address the TCR. In ^{Redacted} Claimant 2 faxed a TCR to the Commission that consisted of a fax cover sheet, a cover letter, and a signed Form TCR. The cover letter indicated that Claimant 2 was providing exhibits and two discs that contained documentation related to the Company's alleged ^{Redacted} Claimant 2 has indicated that these were the same discs and documents that Claimant 2 had provided to the Other Agency in ^{Redacted} However, the fax cover sheet contained a handwritten note from Claimant 2's counsel that stated: "[t]he hardcopy with exhibits and discs shall be forwarded via certified mail." This TCR submission was subsequently uploaded and preserved in the Commission's Tips, Complaints, and Referrals System ("TCR System"). The copy of the TCR that was uploaded and preserved in the TCR System was the faxed TCR, which did not contain any exhibits or discs, as per Claimant 2's counsel's handwritten note.

According to the TCR System, Claimant 2 "provided [his/her] submission via facsimile and refers to additional information on [discs] that have not arrived in [OWB], to date. OWB will upload [the discs] once they are delivered." There is nothing in the TCR System that indicates whether the discs were ever received by OWB or the wider Commission.²¹ According to the Declaration, provided under penalty of perjury, while Staff received Claimant 2's TCR and cover letter (*i.e.*, the faxed TCR that was uploaded and preserved in the TCR System), Staff never received any of Claimant 2's discs during the Investigation. Thus, based on the factual record, there is no evidence that Staff or the Commission ever received Claimant 2's discs and the documents contained therein. According to the Declaration, the information that Staff did receive from Claimant 2 was limited, none of the information was used in, nor had any impact on, the charges brought by the Commission in the Covered Action, and Staff had no contact with Claimant 2 or his/her counsel during the Investigation. Accordingly, Claimant 2 did not provide any information that led to the successful enforcement of the Covered Action.

Claimant 2's claim must also be denied because Claimant 2's submission of information to the Commission was not made voluntarily. Of relevance to Claimant 2's claim, Rule 21F-4(a)(1) specifies that in order for a claimant's submission to be made voluntarily, the claimant must provide his/her submission before a request, inquiry, or demand that relates to the subject matter of the claimant's submission is directed to the claimant or anyone representing the claimant (such as an attorney) in connection with an investigation by Congress.

²¹ In ^{Redacted} after the Preliminary Determination was issued, Claimant 2 submitted a declaration from his/her counsel which stated that on the same day that Claimant 2's counsel faxed Claimant 2's TCR to the Commission in ^{Redacted} counsel also sent Claimant 2's TCR, along with attachments, to OWB via "certified mail with return receipt". We have considered this declaration as part of the record pursuant to Rule 21F-12(a) in evaluating Claimant 2's whistleblower award claim. However, even if Claimant 2's counsel did mail Claimant 2's TCR—including attachments on discs—to OWB, there is nothing in the record indicating that this submission was received by OWB or Staff responsible for the Investigation that led to the Covered Action.

Here, on the TCR that Claimant 2 submitted to the Commission, Claimant 2 was asked the following: “Have you or anyone representing you received any request, inquiry or demand that relates to the subject matter of your submission (i) from the SEC, (ii) in connection with an investigation, inspection or examination by the Public Company Accounting Oversight Board, or any self-regulatory organization; or (iii) in connection with an investigation by the Congress, any other authority of the federal government, or a state Attorney General or securities regulatory authority?” In response, Claimant 2 answered “yes” and stated that “[a] Congressional Oversight Committee contacted [Claimant 2’s] Attorney and inquired about [Claimant 2’s] knowledge of the ^{Redacted} Article that set forth the ^{Redacted} involving [the Company].” Claimant 2 has indicated that the Committee reached out to Claimant 2’s counsel in late ^{Redacted} long before Claimant 2’s submission to the Commission in ^{Redacted} and even before Claimant 2’s purported submission to the Other Agency in ^{Redacted}. Thus, Claimant 2’s submission of information to the Commission was not made voluntarily.²²

None of Claimant 2’s other arguments change our conclusion to deny Claimant 2’s claim. There is no merit to Claimant 2’s suggestion that the publication of the Article—which caused the Commission to issue the Formal Order—and Claimant 2’s purported contributions to it entitle Claimant 2 to an award. As discussed previously, Claimant 2’s award claim must be denied because of Claimant 2’s non-compliance with the Rules as well as the fact that the information Claimant 2 provided to the Commission had no bearing on the advancement of the Investigation or the success of the Covered Action.

Claimant 2’s argument regarding the alleged incompleteness of the record is inapposite, and we deny Claimant 2’s request for additional documents. The evidence in the record demonstrates that Claimant 2 requested and then was properly sent the record materials that formed the basis for the Preliminary Determination.²³ Claimant 2 is not entitled to any extra-record materials. We have appropriately considered all materials contemplated by the Rules in reaching our conclusion to deny Claimant 2 an award.²⁴ Further, we conclude that OWB was

²² Claimant 2 argues that reaching out and seeking to provide information to the Other Agency prior to receiving the request from the Committee renders his/her submission voluntary under 21F-4(a)(2). However, Rule 21F-4(a)(2) requires the actual submission of information to another entity—not merely an offer to submit information. Here, Claimant 2 concedes that his/her contact with the Other Agency in ^{Redacted} was an offer to provide information to the Other Agency and that Claimant 2 did not actually submit his/her information to the Other Agency until ^{Redacted}.

²³ The record materials included a redacted version of the Declaration—which was redacted to protect the confidentiality of Claimant 1 and Joint Claimants—Claimant 2’s Form WB-APP, and Claimant 2’s TCR. Because Claimant 2 had previously submitted the Form WB-APP and the TCR to the Commission, those documents were omitted from the record package that OWB sent to Claimant 2; however, the Form WB-APP and the TCR are still part of the record.

²⁴ The Rules state that the record upon which an award determination is made shall consist of sworn declarations provided by the relevant Commission staff, in addition to the publicly available materials related to the

correct in deciding not to dismiss the confidentiality agreement that Claimant 2 and OWB entered into when OWB provided Claimant 2 with the record materials. A claimant's execution of a confidentiality agreement is consistent with Rule 21F-8(b)(4),²⁵ and there is no reason to dismiss an agreement that was freely entered into between Claimant 2 and OWB as a precondition for Claimant 2 to receive the record materials in this matter.

There is also no merit to Claimant 2's other arguments. The record does not support a view that Claimant 2's constitutional rights—including his/her rights under the First Amendment, the Fifth Amendment, the Fourteenth Amendment, and Claimant 2's civil rights under Section 1983—have been violated, as Claimant 2 vaguely alleges. To the extent Claimant 2 is arguing that his/her constitutional rights were violated because the Commission staff did not reach out to Claimant 2, the argument is without merit because Claimant 2 is not entitled under the Constitution to a response from the Commission.

Claimant 2 alleges that the Company covered-up its misconduct years prior to the Article—specifically, starting in ***—and only reported to the Commission in Redacted in a disingenuous effort to receive self-reporting credit. Claimant 2 also alleges that when the Company reported to the Commission, it hid additional information indicating that the Redacted Redacted was much more extensive than what the Company reported. However, Claimant 2's arguments in this regard are merely speculative. Moreover, the Covered Action discussed in detail a prior internal investigation that the Company had conducted beginning in *** into allegations of Redacted recognizing the Company's failures to promptly take certain actions in response to investigative findings.²⁶ In the Covered Action, the Commission also considered and took note of the Company's extensive and robust disclosure, cooperation, and remedial efforts.²⁷

Covered Action, the claimant's tip, the claimant's award application, and any other materials timely submitted by the claimant in response to the Preliminary Determination. *See* Exchange Act Rule 21F-12(a), 17 C.F.R. § 240.21F-12(a). There is no basis to disregard Rule 21F-12(a) and expand the record to include any of the additional documents requested by Claimant 2. *See* Exchange Act Rule 21F-12(b), 17 C.F.R. § 240.21F-12(b) (“These rules do not entitle claimants to obtain from the Commission any materials (including any pre-decisional or internal deliberative process materials that are prepared exclusively to assist the Commission in deciding the claim) other than those listed in paragraph (a) of this section [i.e., Rule 21F 12(a)].”

²⁵ *See* Exchange Act Rule 21F-8(b)(4), 17 C.F.R. § 240.21F-8(b)(4) (“In addition to any forms required by these rules, the Commission may also require that you provide certain additional information. You may be required to: . . . (4) Enter into a confidentiality agreement in a form acceptable to [OWB], covering any non-public information that the Commission provides to you, and including a provision that a violation of the agreement may lead to your ineligibility to receive an award.”).

²⁶ *See* Covered Action ¶¶ *** The Covered Action detailed several instances where the Company planned to implement proper compliance and training, only to put those plans on hold or otherwise allow Redacted Redacted to persist even in the face of red flags and Redacted

²⁷ *See id.* at ¶¶ *** The Covered Action credited the Company for cooperating with the Commission in a number of ways during the Investigation and also for implementing substantial remedial measures.

Finally, we decline to invoke Rule 21F-8(a) to waive Claimant 2's non-compliance with the Rules, as such a waiver is not warranted. Under Rule 21F-8(a), "the Commission may, in its sole discretion, waive" any of the Rules "upon a showing of extraordinary circumstances."²⁸ We have explained that "the extraordinary circumstances exception is to be narrowly construed and applied only in limited circumstances."²⁹ Claimant 2 argues that extraordinary circumstances exist due to the Company's extensive retaliation against him/her, including terminating Claimant 2's employment and bringing suit against him/her. Claimant 2 alleges that as a result of these actions, Claimant 2 and his/her family have suffered greatly and that Claimant 2 has endured chronic severe depression. Applying Rule 21F-8(a)'s demanding standard, we find that Claimant 2 has not demonstrated that extraordinary circumstances exist here. Nothing about the purported hardships that Claimant 2 alleges to have suffered provide an excuse or justification for Claimant 2's non-compliance with the Rules. We therefore find it inappropriate to invoke our discretionary authority under Rule 21F-8(a).

C. Joint Claimants

We deny an award to Joint Claimants. 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 enforcement of a covered action.³⁰ Joint Claimants did not provide the Commission with such information. Because Joint Claimants do not qualify for an award for the Covered Action, Joint Claimants are not eligible for a related action award.³¹

The information that Joint Claimants provided to the Commission did not either (1) cause the Commission to commence an examination, open or reopen an investigation, or inquire concerning different conduct as part of a current Commission examination or investigation, and thereafter bring a successful Commission judicial or administrative action based, in whole or in part, on conduct that was the subject of Joint Claimants' information;³² or (2) significantly contribute to the success of a Commission judicial or administrative action.³³ We credit the Declaration, provided under penalty of perjury, which confirms that Joint Claimants' information did not help advance the Investigation. None of Joint Claimants' information was used in, nor had any impact on, the charges brought in the Covered Action. The Covered Action's charges were based on information and documents obtained from the Company and from witnesses other than Joint Claimants and the individuals they provided to Staff for interviews.

²⁸ Exchange Act Rule 21F-8(a); 17 C.F.R. § 240.21F-8(a).

²⁹ See, e.g., Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 77368, 2016 WL 1019130, at *3 (Mar. 14, 2016), *pet. denied sub nom. Cerny v. SEC*, 707 F. App'x 29 (2d Cir. 2017).

³⁰ Exchange Act Section 21F(b)(1), 15 U.S.C. §78u-6(b)(1).

³¹ See *supra* note 11.

³² See Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

³³ See Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

Specifically, according to the Declaration, Claimant 3 submitted a tip to the Commission in ^{Redacted} This tip stated that Claimant 3 suspected that the Subsidiary had ^{Redacted}

^{Redacted} The tip acknowledged that Claimant 3 had no direct evidence of ^{Redacted}
In ^{Redacted} Claimant 4 submitted a tip to the Commission. Claimant 4's tip claimed that Claimant 4 had acted as a ^{Redacted} for the Subsidiary. Claimant 4 alleged that he/she had specific information related to misconduct involving the Subsidiary, including personally witnessing ^{Redacted}

In response to the receipt of each tip—which were interrelated—Staff had a number of telephone conversations with counsel representing Joint Claimants. Staff interviewed Joint Claimants as well as additional witnesses. Staff also sought information from the Company and other third parties in an effort to substantiate Joint Claimants' allegations. Despite Staff's substantial investigative efforts to corroborate Joint Claimants' allegations, Staff was unable to do so. Joint Claimants' submissions, although voluminous, only provided information relating to ^{Redacted}

Likewise, the witness interviews that Joint Claimants facilitated only related to this discrete topic. Because Staff could not corroborate Joint Claimants' allegations, these allegations were not included in the Covered Action. Instead, the portion of the Covered Action concerning ^{Redacted} focused on the allegations contained in the Article. Such allegations related to ^{Redacted}

^{Redacted}

Given these facts, there is no merit to any of the arguments that Joint Claimants raise in their request for reconsideration. The timing of Joint Claimants' submission to the Commission vis-à-vis the publication of the Article is immaterial—what is relevant is that none of Joint Claimants' information about ^{Redacted} had any impact on the charges brought in the Covered Action. Also extraneous to the determination of Joint Claimants' award claim is the volume of information and documents and the amount of effort, assistance, and hardship that Joint Claimants alleged to have exerted, extended, and experienced in coming forward with their information. Because the substance and subject matter of Joint Claimants' information and assistance had no bearing on the charges brought forth in the Covered Action, Joint Claimants did not provide the Commission with original information that led to the successful enforcement of a covered action. Joint Claimants' allegation that a Commission attorney purportedly made statements extolling the significance of Joint Claimants' information during the Investigation does not alter this conclusion. An alleged statement made by a Commission attorney does not constitute a legal conclusion regarding a claimant's eligibility for a whistleblower award. According to the Declaration, ultimately, none of Joint Claimants' information was used in, nor had any impact on, the charges brought in the Covered Action. Instead, as confirmed by the Declaration, the Covered Action's charges were based on

information obtained from sources other than Joint Claimants and the individuals they identified as witnesses.

III. Conclusion

Accordingly, it is hereby ORDERED that the whistleblower award applications of Claimant 1, Claimant 2, and Joint Claimants in connection with the Covered Action be, and hereby are, denied.

By the Commission.

J. Matthew DeLesDernier
Deputy Secretary