

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 78025 / June 9, 2016

WHISTLEBLOWER AWARD PROCEEDING

File No. 2016-13

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In the Matter of the Claim for Award

in connection with

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM**

On February 1, 2016, the Claims Review Staff (“CRS”) issued a Preliminary Determination related to Covered Action Redacted Redacted ( Redacted “the Covered Action”).<sup>1</sup> The Preliminary Determination recommended that Claimant #1 (“Claimant #1”) receive a whistleblower award of .. in the Covered Action. The Preliminary Determination also recommended that award applications submitted by Claimant #2 (“Claimant #2”), Claimant #3 (“Claimant #3”), Claimant #4

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(“Claimant #4”), and Claimant #5 (“Claimant #5”) be denied. Claimant #4 and Claimant #5 filed responses contesting the Preliminary Determination.<sup>2</sup>

For the reasons stated below, Claimant #1’s claim is approved in the amount of -- and Claimant #4’s and Claimant #5’s claims are denied.

**I. The Covered Action**

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<sup>2</sup> After requesting and reviewing the record, Claimant #2 provided written notice that Claimant #2 would not contest the Preliminary Determination. Claimant #3 failed to submit a timely response contesting the Preliminary Determination. Accordingly, pursuant to Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f), the Preliminary Determination as to Claimant #2 and Claimant #3 denying their claims for award has become the Final Order of the Commission with respect to their award claims.

## II. Claimant #1's Claim Is Approved

On Redacted counsel for Claimant #1 submitted a detailed tip on Form TCR alleging Redacted

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Claimant #1's early Redacted allowed Enforcement staff to conserve time and resources in the investigation, and helped staff to gather evidence supporting the Commission's charges.<sup>3</sup>

Claimant #1's Form TCR also Redacted  
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The CRS preliminarily determined that Claimant #1 provided original information to the Commission that led to the successful enforcement of the Covered Action pursuant to Section 21F(b)(1) of the Exchange Act and Rule 21F-3(a) promulgated thereunder, 17 C.F.R. § 240.21F-3(a).

The CRS also preliminarily determined to recommend that Claimant #1's award be set in the amount of --- percent --- of the monetary sanctions collected in the Covered Action, which will equal payment of more than \$17,000,000. In arriving at this recommendation, the CRS considered the factors set forth in Rule 21F-6, 17 C.F.R. § 240.21F-6, in relation to the facts and circumstances of Claimant #1's application.

Claimant #1 did not contest the Preliminary Determination of the CRS. Accordingly, pursuant to Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f), the Preliminary Determination became the Proposed Final Determination of the CRS.

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<sup>3</sup> In detailing the ways that Claimant #1's original information led to the success of the Covered Action, we caution that whether original information leads to successful enforcement depends on an analysis of the facts and circumstances of each individual case. Thus, the discussion here is not precedential for other matters.

Upon due consideration under Rules 21F-10(f) and (h), 17 C.F.R. §§ 240.21F-10(f) and (h), the Preliminary Determination of the Claims Review Staff is adopted. Accordingly, for the reasons set forth in the Preliminary Determination, it is hereby ORDERED that Claimant #1 shall receive --- percent --- of the monetary sanctions collected, or to be collected, in the Covered Action.

### **III. Claimant #4's and Claimant #5's Claims Are Denied**

#### **A. Preliminary Determination**

On February 1, 2016, the CRS also preliminarily determined to deny Claimant #4's and Claimant #5's award applications because their information did not lead to the successful enforcement of the Covered Action. *See* Section 21F(b)(1) of the Exchange Act, and Rule 21F-3(a) thereunder, 17 C.F.R. § 240.21F-3(a). Also, Claimant #5 based the claim for award on information provided to the Commission before July 21, 2010. Such information is not "original information," as that term is defined under Rule 21F-4(b)(1) of the Exchange Act, because it was provided before the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act.<sup>4</sup>

#### **B. Claimant #4's Response**

On March 24, 2016, Claimant #4 submitted a written response contesting the Preliminary Determination. Claimant #4 failed to identify any specific tip or complaint Claimant #4 made to the Commission in connection with the Covered Action. Instead, Claimant #4 contended that Claimant #4 provided documentation to the Commission evidencing

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#### **C. Claimant #5's Response**

On February 10, 2016, Claimant #5 submitted a written response contesting the Preliminary Determination. In the response, Claimant #5 failed to identify any specific tip or complaint Claimant #5 made to the Commission in connection with the Covered Action. Rather, Claimant #5 contended that the preliminary denial of Claimant #5's claim violated the Equal Protection Clause of the Fourteenth Amendment, as well as the First Amendment, to the U.S. Constitution. In support of this argument, Claimant #5 pointed to

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<sup>4</sup> *See Stryker v. SEC*, 780 F.3d 163 (2d Cir. 2015).

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None of the information identified by Claimant #4 or Claimant #5 in their responses had any apparent relevance to the question of whether they provided information to the Commission that led to the successful enforcement of the Covered Action.

#### D. Analysis

To qualify for an award under Section 21F of the Exchange Act, a whistleblower must voluntarily provide the Commission with original information that leads to the successful enforcement of a covered judicial or administrative action or related action. 15 U.S.C. § 78u-6(b)(1). As relevant here, original information “leads to” a successful enforcement action if either: (i) the original information caused the staff to open an investigation, reopen an investigation, or inquire into different conduct as part of a current investigation, and the Commission brought a successful action based in whole or in part on conduct that was the subject of the original information; or (ii) the conduct was already under examination or investigation, and the original information significantly contributed to the success of the action. Rule 21F-4(c)(1)-(2), 17 C.F.R. § 240.21F-4(c)(1)-(2).

We find that none of the information Claimant #4 or Claimant #5 submitted led to the successful enforcement of the Covered Action.<sup>6</sup> *First*, at no point prior to Redacted the Covered Action did the staff members responsible for the Covered Action have any contact with, or receive any information from, Claimant #4 or Claimant #5. *Second*, based on our own assessment of the information that Claimant #4 and Claimant #5 submitted, we cannot see how this information could have led to the successful enforcement of the Covered Action given the absence of relevant factual connections between the two.

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<sup>5</sup> For instance, Claimant #5 contends that Claimant #5:

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<sup>6</sup> In the alternative, we deny Claimant #5’s award application because Claimant #5 did not provide any original information to the Commission. The Preliminary Determination identified this as a second ground for denial and Claimant #5 failed to demonstrate otherwise in Claimant #5’s response to the Preliminary Determination.

Because the record demonstrates that Claimant #4's and Claimant #5's information did not lead to the successful enforcement of the Covered Action and they have not shown otherwise in their requests for reconsideration of the Preliminary Determination, we deny Claimant #4's and Claimant #5's applications for an award.<sup>7</sup>

#### **IV. Conclusion**

Accordingly, it is ORDERED that Claimant #1 shall receive an award of --- percent --- of the monetary sanctions collected, or to be collected, in the Covered Action.

ORDERED that Claimant #4's whistleblower award claim is denied.

ORDERED that Claimant #5's whistleblower award claim is denied.

By the Commission.

Brent J. Fields  
Secretary

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<sup>7</sup> We have considered Claimant #5's various constitutional claims, but we find them frivolous. They lack merit and have no bearing on the critical factual question whether Claimant #5 has met the requirements to receive an award.