

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 95486 / August 12, 2022

WHISTLEBLOWER AWARD PROCEEDING  
File No. 2022-74

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In the Matter of the Claim for Award

in connection with

Redacted

Redacted

Notice of Covered Action <sup>Redacted</sup>

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM**

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending the denial of the whistleblower award claim submitted by <sup>Redacted</sup> (“Claimant”) in connection with the above-referenced covered action (“Covered Action”). Claimant filed a timely response contesting the preliminary denial. For the reasons discussed below, Claimant’s award claim is denied.

**I. Background**

**A. The Covered Action**

On <sup>Redacted</sup>, the Commission filed the Covered Action against <sup>Redacted</sup>  
<sup>Redacted</sup>

<sup>Redacted</sup> alleging violations of <sup>Redacted</sup>  
<sup>Redacted</sup>

The Commission alleged that over the course of  
<sup>Redacted</sup>  
<sup>Redacted</sup>  
<sup>Redacted</sup>  
<sup>Redacted</sup>

Redacted

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Simultaneously with the filing of the Commission’s complaint, (1) the defendants consented to the entry of a final judgment

Redacted consented to pay disgorgement and prejudgment interest totaling Redacted consented to pay a civil penalty of Redacted the court entered a final judgment ordering the same and also found Redacted liable for disgorgement and prejudgment interest, Redacted

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.<sup>1</sup> Claimant filed a timely whistleblower award claim.

**B. The Preliminary Determination**

On Redacted, the CRS issued a Preliminary Determination<sup>2</sup> recommending that Claimant’s claim be denied on two grounds.<sup>3</sup>

*First*, Claimant knowingly and willfully made materially false statements in Claimant’s dealings with the Commission within the meaning of Section 21F(i) of the Exchange Act and Rule 21F-8(c)(7) thereunder, and therefore was ineligible for an award. Specifically, Claimant knowingly and willfully made a number of materially false statements and representations to the Commission during the course of the Investigation. Moreover, Claimant knowingly and

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

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

<sup>3</sup> The record supporting the Preliminary Determination included the declaration (“Enforcement Declaration”) of one of the Division of Enforcement (“Enforcement”) attorneys who was assigned to the investigation that led to the Covered Action (“Investigation”) as well as the declaration of an attorney from OWB (“OWB Declaration”). The whistleblower rules contemplate that the record upon which an award determination is made shall consist of, as relevant here, sworn declarations provided by relevant Commission staff, in addition to the publicly available materials related to the 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).

willfully made a number of materially false statements and representations to the Commission with respect to the Commission’s consideration and evaluation of Claimant’s whistleblower award application, dated [Redacted] (“ [Redacted] Award Application”).

In particular, Claimant made several materially false statements in the [Redacted] Award Application regarding the alleged information and assistance Claimant provided to the Commission during the Investigation. Further, on [Redacted], when Claimant provided sworn testimony to Enforcement staff during the Investigation (“ [Redacted] Testimony”), Claimant made several statements that were contrary to other evidence that Enforcement staff developed during the Investigation. Additionally, in the [Redacted] Testimony, Claimant made several statements that were inconsistent with (1) information that Claimant had previously provided to the Commission in a written submission, dated [Redacted] (“ [Redacted] Tip”), and (2) a Form TCR, dated [Redacted] (“ [Redacted] Form TCR”), that Claimant submitted to the Commission after the [Redacted] Testimony.

The Enforcement Declaration extensively detailed, under penalty of perjury, the specific facts that support our determination that Claimant knowingly and willfully made a number of materially false statements in his/her dealings with the Commission. The Enforcement Declaration provided comprehensive and explicit citations to the record—including the [Redacted] Tip, the [Redacted] Testimony, the [Redacted] Form TCR, and the [Redacted] Award Application—demonstrating how Claimant made materially false statements and representations. Such statements and representations included the following:

- (1) One reason for Enforcement staff to take Claimant’s testimony in [Redacted] was to determine whether [Redacted]

In response, Claimant stated:

[Redacted] Claimant also stated that he/she did not know whether [Redacted]. Then, in the [Redacted] Form TCR, Claimant contradicted the [Redacted] Testimony by stating that [Redacted] Enforcement staff ultimately discovered that [Redacted]

Redacted

(2) Further, Claimant testified that in Redacted  
Redacted

However, this was not actually the case, as Redacted  
Redacted

Additionally, Claimant contradicted  
himself/herself in the Redacted Form TCR, this time stating that  
Redacted

Redacted

(3) In the Redacted Award Application, Claimant stated that he/she had  
provided the Commission with "key intel" that Redacted

Claimant also represented that  
he/she informed the Commission that Redacted

However, during the Redacted  
Testimony, Claimant stated that he/she did not know Redacted

And, in the Redacted Tip, while  
Clamant stated that Redacted

Claimant did not provide any information  
about Redacted Instead,  
Enforcement staff separately obtained the evidence that Redacted

(4) In the Redacted Award Application, Claimant stated that he/she had  
provided key testimony before the Commission in Redacted that \*\*\*  
Redacted

Redacted However, during Claimant's  
Redacted Testimony, Claimant stated that he/she did not know whether  
Redacted

In fact,  
Claimant never mentioned Redacted at all during the Redacted  
Testimony or in the Redacted Tip or the Redacted Form  
TCR.

(5) In the Redacted Award Application, Claimant stated that he/she had  
previously sent the Commission a Redacted  
Redacted

Redacted and that the Commission used this as evidence \*\*\*  
Redacted

However, during the Redacted Testimony,  
Claimant stated that: (1) Claimant did not remember previously seeing \*\*\*  
Redacted ; (2) Claimant had not seen Redacted

Redacted until the day of the  
Redacted  
Redacted Testimony; and (3) Claimant did not see any Redacted  
\*\*\* after \*\*\* , when Claimant Redacted  
Redacted Moreover, the Commission had actually received the  
Redacted the Commission  
never received Redacted from Claimant.

- (6) In the Redacted Award Application, Claimant stated that he/she previously provided the Commission with \*\*\* in support of Claimant's allegations. In fact, however, Claimant never provided Redacted to the Commission.

According to the Enforcement Declaration, Claimant's untruthful testimony and statements concerned conduct that was at the heart of the Investigation and the conduct charged in the Covered Action. Additionally, the Enforcement Declaration stated that Claimant's conduct in his/her dealings with the Commission impeded the Investigation.

The second ground for denial in the Preliminary Determination was that Claimant did not submit his/her information on Form TCR or sign the requisite whistleblower declaration in accordance with Rules 21F-9(a), (b), and (e). Claimant was not entitled to the automatic waiver under Rule 21F-9(e) because: (1) Claimant obtained actual notice of the Form TCR requirement in Redacted , but Claimant did not cure the deficiency within 30 days; and (2) Claimant would not otherwise qualify for an award.

Specifically, when Claimant submitted the Redacted Tip to the Commission, Claimant did not include a Form TCR with the submission. Consequently, in Redacted , OWB informed Claimant that pursuant to the whistleblower program rules, Claimant was required to submit a signed Form TCR in order to be considered for a whistleblower award. Claimant, however, did not submit a Form TCR to the Commission until several years later in Redacted \*\*\* , when Claimant submitted the Redacted Form TCR.

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

Claimant submitted a timely written response contesting the Preliminary Determination.<sup>4</sup> In the response, Claimant disagreed with the statement that he/she made materially false statements and representations in his/her dealings with the Commission. Claimant argued that during the Redacted Testimony, the way Enforcement staff asked Claimant questions made him/her feel uneasy about how to respond. Claimant alleged that the questions demanded

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

absolute, 100 percent certainty. Claimant stated that he/she answered the questions in the manner in which Claimant did because “[h]ad [Claimant] answered a question that was not 100% accurate, [Claimant] would have availed [himself/herself] to perjury charges—this is why [Claimant] answered [his/her] questions that conflicted with [his/her] original tip.” According to Claimant, although he/she was almost certain there was wrongdoing that violated the securities laws, he/she was not absolutely certain—purportedly, only the actual perpetrators of the fraudulent activity could have known for certain whether violations of the securities laws and certain other conduct transpired. According to Claimant, this is why Claimant responded to the Commission’s questions in the manner in which he/she did.

Claimant also argued that because several years had elapsed between the time Claimant submitted the <sup>Redacted</sup> Tip and Claimant’s <sup>Redacted</sup> Testimony, one would expect the accuracy of the information to suffer “some form of deterioration.” Additionally, Claimant stated that he/she submitted <sup>Redacted</sup> to the Commission in <sup>Redacted</sup> and that Claimant sent the Commission emails that supported his/her allegations via U.S. mail as well as via email.

Finally, Claimant argued that due to circumstances beyond his/her control, the Commission should exercise its exemptive authority under Section 36(a) of the Exchange Act and grant Claimant an award because this would purportedly create a strong incentive for whistleblowers to come forward to the Commission in the future with information about possible violations of the federal securities laws.

## II. Analysis

We deny an award to Claimant in connection with the Covered Action. 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.<sup>5</sup> Although Claimant submitted information that caused Enforcement staff to open the Investigation, Claimant violated Section 21F(i) of the Exchange Act and Rule 21F-8(c)(7) thereunder<sup>6</sup> because Claimant knowingly and willfully made materially false statements in Claimant’s dealings with the Commission.

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<sup>5</sup> Exchange Act Section 21F(b)(1), 15 U.S.C. §78u-6(b)(1).

<sup>6</sup> Rule 21F-8(c)(7) specifies that a claimant seeking a whistleblower award is not eligible to be considered for an award if “[t]he Commission . . . finds that, in [claimant’s] whistleblower submission, [or claimant’s] other dealings with the Commission (including [claimant’s] dealings beyond the whistleblower program and covered action) . . . [claimant] knowingly and willfully made any materially false, fictitious, or fraudulent statement or representation.” This rule does “not apply if the Commission, in its discretion, finds it consistent with the public interest, the

All of Claimant's arguments in the request for reconsideration are unavailing, and nothing in the record supports Claimant's assertions. Claimant, who was represented by counsel at the Redacted Testimony, points to nothing in the Redacted Testimony transcript or any other evidence in the record to support Claimant's contention that the way the questions were posed by Enforcement staff made him/her feel uneasy about answering truthfully and accurately while under oath. Indeed, Claimant had, and took, opportunities to confer with counsel during the Redacted Testimony. Counsel and Claimant also were provided an opportunity to ask clarifying questions or make a statement before the testimony record was closed, and elected not to do so. And, we are unable to detect any evidence of improper questioning in the transcript of the Redacted Testimony.

Further, Claimant's assertion that he/she testified in the manner in which Claimant did during the Redacted Testimony because Claimant was fearful of committing perjury is unjustified. As detailed extensively in the Enforcement Declaration, Claimant made a multitude of materially false statements and representations in his/her dealings with the Commission that were contrary to Claimant's own statements elsewhere and contrary to the evidence Enforcement staff discovered. A fear of perjury does not adequately explain these contradictions in the record. Moreover, a supposed fear of perjury during the Redacted Testimony would not explain Claimant's materially false statements in the Redacted Award Application.

Claimant's contention that he/she did not fully appreciate the illegality of Redacted is also unavailing. During the Redacted Testimony, Enforcement staff asked Claimant about specific facts and specific events and did not require Claimant to opine on the legality of what he/she witnessed. Similarly, the submission of a tip or a whistleblower award application to the Commission does not require any knowledge of the securities laws. Therefore, a lack of knowledge about the law would not explain the contradictions between the Redacted Testimony and the Redacted Tip and would not explain the materially false statements in the Redacted Award Application.

Moreover, nothing in the record supports Claimant's suggestion that the accuracy of the information provided to the Commission suffered due to the passage of time rather than because, as Claimant acknowledges elsewhere in the response, Claimant deliberately chose to answer the questions as he/she did. To the contrary, the transcript of Claimant's Redacted Testimony shows that Claimant remembered the contents of the Redacted Tip; however, some of his testimony contradicted the Redacted Tip anyway. There is also no evidence in the record supporting Claimant's assertion that Claimant did, in fact, provide the Redacted and emails supporting his/her allegations to the Commission.

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promotion of investor protection, and the objectives of the whistleblower program" to award claimant a whistleblower award.

Overall, the Enforcement Declaration, which we credit, confirmed under penalty of perjury the numerous instances in which Claimant unambiguously made materially false statements and representations in his/her dealings with the Commission, including in the <sup>Redacted</sup> Tip, the <sup>Redacted</sup> Testimony, the <sup>Redacted</sup> Form TCR, and the <sup>Redacted</sup> Award Application.

Additionally, the OWB Declaration, which we credit, confirmed under penalty of perjury that when Claimant submitted the <sup>Redacted</sup> Tip to the Commission, Claimant did not include a Form TCR with the submission. Consequently, in <sup>Redacted</sup>, OWB informed Claimant by letter that pursuant to the whistleblower program rules, Claimant was required to submit a signed Form TCR in order to be considered for a whistleblower award. Claimant, however, did not submit a Form TCR to the Commission until several years later in <sup>Redacted</sup>. In fact, Claimant's <sup>Redacted</sup> Form TCR was dated <sup>Redacted</sup>, which was one day after the Commission filed the Covered Action on <sup>Redacted</sup>.

Based on the Enforcement Declaration, the OWB Declaration, and the other facts in the record—including but not limited to Claimant's prior submissions to the Commission—we find that: (1) Claimant knowingly and willfully made materially false statements in Claimant's dealings with the Commission within the meaning of Section 21F(i) of the Exchange Act and Rule 21F-8(c)(7) thereunder, and therefore is ineligible for an award;<sup>7</sup> and (2) Claimant did not submit his/her information on Form TCR or sign the requisite whistleblower declaration in accordance with Rules 21F-9(a), (b), and (e).

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<sup>7</sup> Claimant has requested a waiver of the application of Rule 21F-8(c)(7). In light of the factual record in this matter, there is no reason to waive the application of Rule 21F-8(c)(7) in our discretion or to invoke our Section 36(a) exemptive authority. The Commission expects that individuals interacting with Enforcement staff and the whistleblower award program be transparent and honest in their dealings with the Commission. In this case, Claimant was neither transparent nor honest in his/her dealings with the Commission.



### **III. Conclusion**

Accordingly, it is hereby ORDERED that the whistleblower award application of Claimant in connection with the Covered Action be, and hereby is, denied.

By the Commission.

Vanessa A. Countryman  
Secretary