

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 96971 / February 24, 2023

WHISTLEBLOWER AWARD PROCEEDING

File No. 2023-38

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In the Matter of the Claims for an Award

in connection with

Notice of Covered Action

Redacted

Notice of Covered Action

Redacted

Redacted

and

Notice of Covered Action

Redacted

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS**

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

**I. Background**

**A. The Covered Actions**

On <sup>Redacted</sup> the Commission instituted settled cease-and-desist proceedings in Covered Action <sup>Redacted</sup> against <sup>Redacted</sup> (the “Company”), <sup>Redacted</sup>. <sup>Redacted</sup>  
The Commission alleged that

Redacted

The Commission alleged that

Redacted

Redacted

The Commission charged the Company with violating

Redacted

Redacted

Redacted The Company agreed to pay a civil money penalty of Redacted settle the Commission’s charges.

On Redacted the Commission instituted settled cease-and-desist proceedings in Covered Action Redacted against Redacted (“Respondents”). The Commission alleged that the Respondents Redacted

Redacted The Commission charged Respondents with violations of Redacted

Redacted Respondents agreed to pay a civil money penalty of Redacted to settle the Commission’s charges.

On Redacted the Commission instituted settled cease-and-desist proceedings in Covered Action Redacted against Redacted and Redacted The Commission alleged that Redacted

Redacted In addition, the Commission alleged that Redacted Commission charged Redacted with violating Redacted The and Redacted with violating Redacted

On Redacted OWB posted Notice of Covered Action Redacted on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days. On Redacted OWB posted Notice of Covered Action Redacted on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days. On Redacted OWB posted Notice of Covered Action Redacted on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days. Claimant submitted timely applications for award for the Covered Actions.

**B. The Preliminary Determinations**

On Redacted the CRS issued Preliminary Determinations<sup>1</sup> recommending that Claimant’s award claims for the Covered Actions be denied because Claimant did not provide information that led to the successful enforcement of the Covered Actions within the meaning of Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(3) and 21F-4(c) thereunder. The CRS stated that staff in the Commission’s Office of Market Intelligence (“OMI”) closed Claimant’s tip with a disposition of “no further action planned” and did not forward the tip to Enforcement staff in connection with any matter, including the Covered Actions.

The CRS also preliminarily recommended denying an award to Claimant because Claimant was not a “whistleblower” under Exchange Act Rule 21F-2(a)(1) with respect to the Covered Actions. To qualify as a whistleblower, an individual must, among other things,

<sup>1</sup> In the Preliminary Determinations, the CRS also recommended denying an award to Claimant in six other Covered Actions. Claimant withdrew his/her applications for award in those six other matters.

provide information regarding a potential securities law violation to the Commission in the form and manner that is required by Exchange Act Rule 21F-9(a), which Claimant did not do. The CRS stated that Claimant did not submit information on Form TCR or online, through the Commission’s website. In addition, Claimant did not sign the whistleblower declaration as required under Exchange Act Rule 21F-9(b).

### C. Claimant’s Response to the Preliminary Determinations

Claimant submitted a timely written response (the “Response”) contesting the Preliminary Determinations.<sup>2</sup> In the reconsideration request, Claimant contends that he/she submitted information on Form TCR on <sup>Redacted</sup> in response to correspondence from <sup>Redacted</sup> OWB. Claimant also argues that the whistleblower award applications he/she filed after <sup>Redacted</sup> “all have a nexus with these claims.” Claimant attached to his/her response certain <sup>Redacted</sup> correspondence with OWB, including a copy of one of Claimant’s TCR submissions, dated <sup>Redacted</sup> and correspondence regarding other covered actions.

Claimant does not argue in his/her response that the information in his/her TCR submissions led to the success of the Covered Actions.

## II. 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 action.<sup>3</sup> As relevant here, original information will be deemed to lead to a successful enforcement action if either: (i) the original information caused the staff to open an investigation “or to inquire concerning 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;<sup>4</sup> or (ii) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”<sup>5</sup>

In determining whether the information “significantly contributed” to the success of the action, the Commission will consider whether the information was “meaningful” in that it “made a substantial and important contribution” to the success of the covered action.<sup>6</sup> For example, the Commission will consider a claimant’s information to have significantly contributed to the success of an enforcement action if it allowed the Commission to bring the action in significantly

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

<sup>3</sup> Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

<sup>4</sup> See Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

<sup>5</sup> See Exchange Act Rule 21-F-4(c)(2), 17 C.F.R § 240.21F-4(c)(2).

<sup>6</sup> Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 90922 (Jan. 14, 2021) at 4; *see also* Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 85412 (Mar. 26, 2019) at 9 (same).

less time or with significantly fewer resources, or to bring additional successful claims or successful claims against additional individuals or entities.<sup>7</sup>

There is no evidence in the record that Claimant's information led to the successful enforcement of any of the Covered Actions. Claimant's initial submission was sent to OWB in the form of a letter dated <sup>Redacted</sup> Claimant's information was not submitted on a Form TCR nor did Claimant declare under penalty of perjury that the information in the letter was true and correct to the best of his/her knowledge. Claimant's letter was uploaded to the Commission's TCR system by OWB staff the following month and the letter was assigned a TCR number (the "First TCR"). The record shows that OMI staff closed the First TCR with a disposition of "no further action" because the First TCR was vague and insubstantial. OMI staff did not forward the First TCR to staff assigned to any of the Covered Actions or to staff assigned to any other matter; the staff assigned to each of the three Covered Actions did not receive or review Claimant's information.

Claimant correctly points out in the Response that he/she made a second submission on or about <sup>Redacted</sup> on Form TCR (the "Second TCR"). Nevertheless, the record indicates that the Second TCR also did not lead to the success of the Covered Actions. Based upon a supplemental declaration from OWB staff, which we credit, the record shows that OMI staff also closed the Second TCR with a disposition of "no further action" because the Second TCR was also vague and insubstantial. OMI staff did not forward the Second TCR to staff assigned to any of the Covered Actions or to staff assigned to any other matter. Further, OWB staff confirmed in a supplemental declaration, which we credit, that the separate Commission staff assigned to each of the Covered Actions did not receive or review Claimant's information. Accordingly, there is no evidence in the record that Claimant's information led to the success of any of the Covered Actions.<sup>8</sup>

For the above reasons, Claimant is not entitled to an award in connection with the Covered Actions.<sup>9</sup>

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<sup>7</sup> Exchange Act Rel. No. 85412 at 8-9.

<sup>8</sup> Regardless, Claimant's Response did not contest the CRS's recommendation that Claimant's claims be denied on the ground that Claimant's information did not lead to the success of any of the Covered Actions. By failing to timely present any argument to the Commission during the reconsideration stage as to this ground for denial, Claimant has forfeited the opportunity to contest this ground for denial. *Cf.* Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f) ("Your failure to submit a timely response contesting a Preliminary Determination will constitute a failure to exhaust administrative remedies, and you will be prohibited from pursuing an appeal pursuant to § 240.21F-13 of this chapter."); Order Determining Whistleblower Award Claim at 4, Release No. 95033 (June 3, 2022) (citing Exchange Act 21F-10(f) and stating that claimant failed to present timely arguments during the reconsideration stage regarding two other separate grounds of denial, and thus claimant forfeited the opportunity to contest those grounds for denial).

<sup>9</sup> Claimant also attached to his/her Response certain correspondence with OWB; however, this correspondence is either duplicative of information already in the record or pertains to other Notices of Covered Action and not the Covered Actions at issue in this proceeding.

### **III. Conclusion**

Accordingly, it is hereby ORDERED that the whistleblower award applications of Claimant in connection with the Covered Actions be, and they hereby are, denied.

By the Commission.

Vanessa A. Countryman  
Secretary