

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No.100498 / July 11, 2024

WHISTLEBLOWER AWARD PROCEEDING

File No. 2024-29

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In the Matter of the Claim for an Award

in connection with

Redacted

Notice of Covered Action Redacted

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM**

The Office of the Whistleblower (“OWB”) issued a Preliminary Summary Disposition<sup>1</sup> (“PSD”) recommending the denial of the whistleblower award claim submitted by Redacted Redacted (“Claimant”) in connection with the above-referenced covered action (the “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 Redacted, the Commission filed a complaint in federal district court (“District Court”) against Redacted Redacted

Redacted

Redacted

According to the Commission’s complaint, Redacted

Redacted

The complaint alleged that

Redacted

Redacted

Redacted

The complaint further alleged that, \*\*\* Redacted

Redacted

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<sup>1</sup> See Exchange Act Rule 21F-18, 17 C.F.R. § 240.21F-18.

Redacted  
Redacted The Commission charged Redacted  
Redacted

The District Court entered final judgments against Redacted  
Redacted  
Redacted  
Redacted Redacted  
Redacted Redacted  
Redacted Redacted  
Redacted Redacted  
Redacted Redacted

Redacted The final judgments Redacted  
Redacted . In addition, Redacted  
Redacted ordered to pay a total of Redacted in  
disgorgement of ill-gotten gains, prejudgment interest, and civil penalties.

On Redacted, OWB posted the Notice for the Covered Action on the Commission's public website inviting claimants to submit whistleblower award applications within 90 days, or no later than Redacted. Claimant submitted whistleblower award claims on Redacted and Redacted, which was after the 90-day filing deadline.

## B. The PSD

On Redacted, OWB issued the PSD in connection with the Covered Action recommending that the whistleblower award claim of Claimant be preliminarily denied. OWB noted that the information provided by Claimant was never used by staff handling the Covered Action or underlying investigation, and those staff members (the "Investigative staff") otherwise had no contact with Claimant. Therefore, Claimant did not provide information that led to the successful enforcement of the above-referenced Covered Action within the meaning of Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(3) and 21F-4(c) thereunder because the information provided did not: (1) cause the Commission to (i) commence an examination, (ii) open or reopen an investigation, or (iii) inquire into different conduct as part of a current Commission examination or investigation under Rule 21F-4(c)(1) of the Exchange Act; 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. OWB also noted that Investigative staff responsible for the underlying investigation in the Covered Action stated that the investigation was not opened based on information provided by Claimant; nor did Claimant otherwise contribute to the success of the investigation or the Covered Action.

The PSD also stated that Claimant submitted untimely award applications because Claimant failed to submit the claim for award to OWB within ninety (90) days of the date of the above-referenced Notice of Covered Action, as required under Rule 21F-10(b) of the Exchange Act. OWB noted that the deadline to file award claims for the Covered Action was Redacted<sup>\*\*\*</sup>, but Claimant’s award applications were submitted Redacted and Redacted<sup>\*\*\*</sup>, more than 54 days after the deadline.

### C. Claimant’s Response to the PSD

Claimant submitted a timely written response (the “Response”) contesting the PSD.<sup>2</sup> First, Claimant’s Response questions the sufficiency of Investigative staff’s declaration as evidence to deny his/her claim. Claimant argues that there is a lack of “documentary evidence” supporting that the investigation was opened before his/her tip was submitted and suggests that Investigative staff’s declaration may contain inaccuracies. Claimant further notes that his/her tip “should have been read” and believes that his/her tip may have later been useful in some capacity to the Covered Action. Second, in response to OWB’s PSD that Claimant’s award application was untimely, Claimant contends that OWB had an obligation to inform him/her of the “next step in the process” and, specifically, that Claimant needed to submit a claim for an award. In this vein, Claimant suggests that he/she “gave consent to participate in the award program” when he/she filed his/her initial tip with the Commission. Finally, in a later letter after the Response, Claimant suggests that his/her tip may have contributed to other matters including the investigation “against Redacted Redacted and the investigation Redacted Redacted.”

## 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> Under Rule 21F-4(c), 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

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<sup>2</sup> See Exchange Act Rule 21F-18(b)(3), 17 C.F.R. § 240.21F-18(b)(3).

<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).

under 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 less time or with significantly fewer resources, or to bring additional successful claims or successful claims against additional individuals or entities.<sup>7</sup> For the reasons discussed below, Claimant’s information does not merit a whistleblower award in the Covered Action because the record does not establish that the information led to a successful enforcement action, as required by Rule 21F-4(c).

As an initial matter, we note that the record now includes five sworn declarations, which we credit, (three of which were obtained in response to the Claimant’s request for reconsideration) including the initial declaration and a supplemental declaration prepared by one of the primary Enforcement attorneys assigned to the investigation; a declaration by Enforcement trial counsel assigned to two litigated actions referenced in Claimant’s reconsideration request; and two declarations from staff of the Office of the Whistleblower. The record shows that the Commission opened the investigation on <sup>Redacted</sup>, based on information gathered in a related investigation. The record reflects that Claimant did not submit a tip until <sup>Redacted</sup> <sup>\*\*\*</sup>. Therefore, he/she cannot be credited with providing information that caused the Commission to open the investigation. The record also demonstrates that Claimant’s information did not otherwise advance the investigation or the ensuing litigation. According to Enforcement staff, the information provided by Claimant about <sup>Redacted</sup> in his/her tip was general in nature and consisted of publicly available information and was not relevant to the ongoing investigation, which focused on <sup>Redacted</sup> in the years prior to the conduct discussed in Claimant’s tip. Indeed, Investigative staff stated that Claimant’s information was not used in the investigation or the resulting Covered Action. Accordingly, the Claimant cannot be credited with causing the Commission to open the investigation or inquire into different conduct, or with significantly contributing to the success of the Covered Action.

The Claimant’s principal response to the PSD appears to be that there is a lack of “documentary evidence” supporting that the investigation was opened before his/her tip was

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<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).

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

submitted and suggests that Investigative staff's declaration may contain inaccuracies. Rule 21F-12(a) describes the materials, including sworn declarations, that the Commission may rely upon to make an award determination. Once again, we credit Investigative staff's initial and supplemental sworn declarations which confirm that the investigation was opened on <sup>Redacted</sup> <sub>Redacted</sub>, several weeks before Claimant submitted his/her tip on <sup>Redacted</sup>, and that none of Claimant's information otherwise advanced the investigation or the resulting Covered Action.<sup>8</sup> While Claimant suggests in the Response that his/her information may have in some capacity been useful to the investigation, the standard for award eligibility is not what the staff would have or could have done hypothetically, but, rather, what impact the whistleblower's information actually had on the investigation.<sup>9</sup> Here, Investigative staff has stated that it considered Claimant's information but found that the information was not helpful; therefore, Claimant's information does not meet the standard for significant contribution under Rule 21F-4(c)(2).

Second, Claimant raises concerns with the second basis for the denial of his/her claim for an award. The PSD noted that Claimant failed to submit the claim for award to OWB within ninety (90) days of the date of the Notice of Covered Action. In the Response, Claimant contends that OWB had an obligation to inform him/her of the "next step in the process" after he/she submitted a tip and argues that, despite OWB being aware of the Covered Action, "OWB did not inform the Claimant about the need to submit [a claim for award]."

Claimant does not appear to dispute that he/she failed to timely submit a claim. Instead, he/she argues that OWB had a duty to inform him/her of the deadline to apply for an award. On a prior order, when addressing an untimely whistleblower application, we noted that:

[T]he Commission is not obligated to notify a claimant of the posting of a NoCA or the deadline for submitting an award application. As we have explained, our whistleblower rules provide "for constructive, not actual, notice of the posting of a covered action and of the deadline for submitting a claim." The NoCA for the Covered Action [was] clearly posted on the Commission's website, along with the requisite deadline[]. Under our rules, that is all the notice that Claimant was due.<sup>10</sup>

Here, we find that the requisite notice was provided. The notice for this Covered Action was posted on the Commission website with a specified deadline (*i.e.*, <sup>Redacted</sup>) to submit a

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<sup>8</sup> See *supra* fn. 4.

<sup>9</sup> See Order Determining Whistleblower Award Claim, Release No. 34-88667 (April 16, 2020) ("We must look to whether the Claimant's information actually contributed to the success of the Covered Action, not whether 'it should have or could have,' as Claimant urges us to do.") (citing Order Determining Whistleblower Award Claim, Release No. 34-85412 (Mar. 26, 2019)).

<sup>10</sup> Order Determining Whistleblower Award Claim, Release No. 88464 at 3-4 (March 24, 2020) (internal citations omitted).

claim. Based on the information in the record, there is no dispute that Claimant missed the deadline to file his/her claim for award given that he/she first submitted a claim nearly two months after the specified deadline.

Finally, Claimant suggests that his/her tip may have somehow contributed to other matters and references, in particular, two other SEC enforcement actions. In his/her letter, Claimant speculates that these two matters are somehow related to the Covered Action. The Enforcement trial attorney assigned to the matters referenced in Claimant's letter provided a declaration, which we credit, stating that Claimant's information did not lead to the opening of the investigations or the resulting actions. Further, that same declaration also indicates that none of the Claimant's information was used to advance these actions. While Claimant believes that there is a "possible connection" between his/her information and the other matters, based on the evidence in the record, Claimant cannot be credited with contributing to these matters regardless of whether or not they are related to the Covered Action.<sup>11</sup>

For these reasons, Claimant is not entitled to a whistleblower award in connection with the Covered Action.

### **III. Conclusion**

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

By the Commission.

Vanessa A. Countryman  
Secretary

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<sup>11</sup> Additionally, a supplemental declaration of OWB staff noted that the matters referenced by the Claimant are not currently Covered Actions. A list of the Commission's Covered Actions and corresponding claim due dates can be found here: <https://www.sec.gov/whistleblower/claim-award>.