

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101280 / October 8, 2024

WHISTLEBLOWER AWARD PROCEEDING
File No. 2025-2

In the Matter of the Claims for an Award

in connection with

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued Preliminary Determinations recommending the denial of the whistleblower award applications submitted by claimants Redacted (“Claimant 2”), Redacted (“Claimant 3”), Redacted (“Claimant 4”), and Redacted (“Claimant 5”) (collectively, “Claimants”) in connection with the above-referenced covered action (“Covered Acton”). Claimants submitted timely responses contesting the preliminary denials.¹

After a review of the responses to the Preliminary Determinations and a supplemental declaration (“Supplemental Declaration”) of one of the Division of Enforcement (“Enforcement”) attorneys who was assigned to the investigation that led to the Covered Action (“Investigation”), the CRS maintained the same recommendation to deny the award claim of Claimant 5 and recommended on reconsideration an award of *** percent (**%) to Claimant 2, an award of *** percent (**%) to Claimant 3, and an award of *** percent (**%) to Claimant 4 of

¹ Preliminary denials were issued to five other claimants in connection with the Covered Action. However, these individuals did not contest the preliminary denial of their claims and, as such, the Preliminary Determination or Preliminary Summary Disposition with respect to each of these claimants’ award claims became the Final Order of the Commission through operation of, as applicable, Exchange Act Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f), or Exchange Act Rule 21F-18(b)(4), 17 C.F.R. § 240.21F-18(b)(4).

determined that Claimants' information did not either: (1) cause the Commission to (a) commence an examination, open or reopen an investigation, or inquire into different conduct as part of a current Commission examination or investigation, and (b) thereafter bring an action based, in whole or in part, on conduct that was the subject of Claimants' information, pursuant to Rule 21F-4(c)(1); or (2) significantly contribute to the success of a Commission judicial or administrative enforcement action pursuant to Rule 21F-4(c)(2). According to the Preliminary Determinations, Claimants were not the source of, or impetus for, the Investigation; the information they provided was not related to the focus of the Investigation or was otherwise already known to Enforcement staff responsible for the Covered Action ("Staff"); Staff did not communicate with Claimants regarding the Covered Action; and Claimants did not provide any information that was used in, or otherwise had any impact on, the Investigation or the Covered Action.

C. Claimants' Responses to the Preliminary Determinations

Claimants submitted timely written responses contesting the Preliminary Determinations.

1. Claimant 2's Response to the Preliminary Determinations

First, Claimant 2 argues that he/she is eligible for an award under Rule 21F-4(c)(3) because he/she sent anonymous emails to Respondent reporting potential ^{Redacted} in ^{Redacted} ("Location D") and reported the same information to the Commission within 120 days. Claimant 2 contends that his/her internal reporting prompted Respondent, at least in part, to start an internal investigation ^{Redacted}. Claimant 2 asserts that his/her anonymous emails and the results of Respondent's internal investigation were reported by Respondent to the Commission, and the results of the internal investigation "satisfy either Rule 21F-4(c)(1) or Rule 21F-4(c)(2)."

Second, Claimant 2 argues that a declaration ("Initial Declaration") of one of the Enforcement attorneys who was assigned to the Investigation that supported the Preliminary Determinations erred in stating that the Covered Action included no findings relating to conduct in Location D.

Finally, Claimant 2 complains about the alleged completeness of the record and requests that the Commission consider certain investigative files, including third-party communications concerning Claimant 2's information, as part of the record.

2. Claimant 3's Response to the Preliminary Determinations

First, Claimant 3 argues that he/she is eligible for an award under Rule 21F-4(c)(3) because: he/she sent an anonymous email to Respondent that prompted Respondent to start internal investigations into potential ^{Redacted} in Location A and Location D; Respondent shared the results of its internal investigations with the Commission; the Commission used those results in connection with the Covered Action; and Claimant 3 submitted the same information to the Commission within 120 days of providing it to Respondent.

Second, Claimant 3 challenges a statement in the Initial Declaration that the Covered Action included no findings relating to conduct in ^{Redacted} that were referenced in Claimant 3's emails, arguing that he/she alleged misconduct in ^{Redacted} and Location D, all of which were referenced in the Covered Action.

Third, Claimant 3 contends that the CRS erred in stating that Claimant 3's tip played no role in the opening of the Investigation and questions whether a self-report from Respondent based on Claimant 3's tip may have led, at least in part, to the Commission's decision to issue a formal order of investigation.

Fourth, Claimant 3 asserts that he/she needs "a clear understanding on timing (and other facts) to know whether, in addition to Rule 21F-4(c)(3), [he/she] also satisfied Rules 21F-4(c)(1) or 21F-4(c)(2)."

Fifth, Claimant 3 argues that the CRS erred to the extent it was "attempting to disqualify" Claimant 3 on the basis that he/she did not provide "original information" as defined in Rule 21F-4(b)(1).

Finally, Claimant 3 complains about the alleged completeness of the record and requests that the Commission consider certain investigative files, including third-party communications concerning Claimant 3's information, as part of the record.

3. Claimant 4's Response to the Preliminary Determinations

First, Claimant 4 argues that he/she is eligible for an award under Rule 21F-4(c)(3) because he/she sent an anonymous email to Respondent that prompted Respondent to conduct an internal investigation into potential ^{Redacted} in Location B and that Claimant 4 should receive credit for the results of that investigation because the Commission used those investigation results in connection with the Covered Action. In support of this argument, Claimant 4 asserts that the Commission should no longer enforce the provision in Rule 21F-

4(c)(3) that requires whistleblowers to report information through an entity's internal compliance procedures before or at the same time as the claimant reports the information to the Commission.

Second, Claimant 4 argues that, to the extent the Preliminary Determinations disqualified Claimant 4 for a lack of "original information," that position is not supported by the record.

Finally, Claimant 4 complains about the alleged completeness of the record and requests that the Commission consider certain investigative files, including third-party communications concerning Claimant 4's information, as part of the record.

4. Claimant 5's Response to the Preliminary Determinations

First, Claimant 5 argues that the record supporting the Preliminary Determinations does not support a denial of his/her claim. Claimant 5 asserts that the Initial Declaration "lacks critical facts" because it notes that the Investigation was opened with respect to Respondent's ^{Redacted} but does not address when the Commission opened or expanded the Investigation to include misconduct in Location C, the subject of Claimant 5's tips. Claimant 5 contends that the lack of any reference to Location C in Respondent's ^{Redacted} annual report disclosures of the Investigation suggests that the Investigation was expanded to include Location C sometime after Claimant 5 submitted his/her initial tip to the Commission.

Second, Claimant 5 argues that the Initial Declaration erred in stating that the conduct alleged in Claimant 5's tips "was not the same as the conduct that was the focus of" the Investigation, as allegations included in information Claimant 5 provided to the Commission are consistent with the misconduct identified in the Covered Action.

Finally, Claimant 5 asserts that whether or not he/she was interviewed as part of the Investigation is not determinative of award eligibility, stating that "the amount and quality of evidence" he/she supplied "could have obviated the need for an interview."

II. Analysis

To qualify for a whistleblower award under Section 21F of the Exchange Act, an individual must voluntarily provide the Commission with original information that leads to the successful enforcement of a covered action.² Under Rules 21F-4(c)(1) and (2), respectively, the Commission will consider a claimant to have provided original information that led to the successful enforcement of a covered action if either: (1) 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

² Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

conduct that was the subject of the original information;³ or (2) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”⁴

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.⁵ 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.⁶

A whistleblower will also be deemed to have provided original information that led to the successful enforcement of a covered action if the whistleblower meets all the criteria of Rule 21F-4(c)(3), which requires the following to be established:

- (1) the whistleblower reported original information through an entity’s internal whistleblower, legal, or compliance procedures for reporting allegations of possible violations of law before or at the same time the whistleblower reported them to the Commission;
- (2) the entity later provided the information to the Commission or provided results of an audit or investigation initiated in whole or in part in response to information the whistleblower reported to the entity;
- (3) the information the entity provided to the Commission satisfies either paragraph (c)(1) or (c)(2) of Rule 21F-4; and
- (4) the whistleblower submitted the same information to the Commission in accordance with the procedures set forth in Rule 21F-9 within 120 days of providing it to the entity.⁷

³ See Exchange Act Rule 21F-4(c)(1); 17 C.F.R. § 240.21F-4(c)(1).

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

⁵ Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 90922 at 4 (Jan. 14, 2021); *see also* Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 85412 at 9 (Mar. 26, 2019).

⁶ Exchange Act Rel. No. 85412 at 8–9.

⁷ Exchange Act Rule 21F-4(c)(3), 17 C.F.R. § 240.21F-4(c)(3).

A. Claimant 2

Claimant 2 voluntarily provided original information that led to the successful enforcement of the Covered Action under Rule 21F-4(c)(3). The record, including the Supplemental Declaration, demonstrates that Claimant 2 reported internally to Respondent about potential misconduct in Location D; within 120 days of reporting internally, Claimant 2 provided the same information to the Commission. After receiving Claimant 2’s information, Respondent investigated Claimant 2’s allegations concerning potential misconduct in Location D as part of an internal investigation into potential misconduct in Location A. Respondent subsequently provided information to the Commission that led to the successful enforcement of the Covered Action as to Location A. Specifically, according to the Supplemental Declaration, the information Respondent shared with the Commission contributed, in part, to Staff’s decision to expand the Investigation to include misconduct in Location A; the information also contributed to the Covered Action’s findings as to misconduct in Location A. Accordingly, Claimant 2 qualifies for a whistleblower award.

Applying the award criteria specified in Rule 21F-6 to the facts and circumstances here, we find that a ***% award to Claimant 2 is appropriate. Additionally, the Covered Action addressed misconduct in regions other than Location A, and a large percentage of the monetary sanctions ordered against Respondent related to conduct other than the violations in Location A. Accordingly, and after considering Claimant 2’s contributions relative to Claimant 3’s and Claimant 4’s contributions, we conclude that a ***% award to Claimant 2 is appropriate.⁸

B. Claimant 3

Claimant 3 voluntarily provided original information that led to the successful enforcement of the Covered Action under Rule 21F-4(c)(3). The record, including the Supplemental Declaration, demonstrates that Claimant 3 reported internally to Respondent about potential misconduct in four locations; within 120 days of reporting internally, Claimant 3 provided the same information to the Commission. After receiving Claimant 3’s information,

⁸ The specific ***%, **%, and ***% awards for Claimant 2, Claimant 3, and Claimant 4 were calculated to approximate the proportionate amounts of Location A-related disgorgement and Location B-related disgorgement identified in the Covered Action respectively. In the Covered Action, the total disgorgement ordered totaled Redacted. Of this Redacted in total disgorgement, Redacted in disgorgement was ordered in connection with misconduct in Location A, and Redacted in disgorgement was ordered in connection with misconduct in Location B. Thus, Redacted of the total Redacted disgorgement (or approximately **%) was associated with misconduct in Location A and Location B. Of the Redacted Location A–Location B disgorgement, ***% of such disgorgement was associated with Location A, and ***% of such disgorgement was associated with Location B. Overall, ***% of a ***% aggregate award approximates to two ***% awards to Claimant 2 and Claimant 3 (for the Location A misconduct), and ***% of a ***% aggregate award approximates to a ***% award to Claimant 4 (for the Location B misconduct).

Respondent investigated Claimant 3's allegations concerning potential misconduct in two of the four locations as part of an internal investigation into potential misconduct in Location A. Respondent subsequently provided information to the Commission that led to the successful enforcement of the Covered Action as to Location A. Specifically, according to the Supplemental Declaration, the information Respondent shared with the Commission contributed, in part, to Staff's decision to expand the Investigation to include misconduct in Location A; the information also contributed to the Covered Action's findings as to misconduct in Location A. Accordingly, Claimant 3 qualifies for a whistleblower award.

Applying the award criteria specified in Rule 21F-6 to the facts and circumstances here, we find that a ***% award to Claimant 3 is appropriate. Additionally, the Covered Action addressed misconduct in regions other than Location A, and a large percentage of the monetary sanctions ordered against Respondent related to conduct other than the violations in related to conduct other than the violations in Location A. Accordingly, and after considering Claimant 3's contributions relative to Claimant 2's and Claimant 4's contributions, we conclude that a ***% award to Claimant 3 is appropriate.⁹

C. Claimant 4

Claimant 4 voluntarily provided original information that led to the successful enforcement of the Covered Action under Rule 21F-4(c)(3), subject to the waiver under Section 36(a) of the Exchange Act discussed below. The record, including the Supplemental Declaration, demonstrates that Claimant 4 reported internally to Respondent about potential misconduct in Location B; within 120 days of reporting internally, Claimant 4 provided the same information to the Commission. After receiving Claimant 4's information, Respondent investigated Claimant 4's allegations as part of an internal investigation into potential misconduct in Location B. Respondent subsequently provided information to the Commission that led to the successful enforcement of the Covered Action as to Location B. Specifically, according to the Supplemental Declaration, the information Respondent shared with the Commission contributed, in part, to Staff's decision to expand the Investigation to include misconduct in Location B; the information also contributed to the Covered Action's findings as to misconduct in Location B. Accordingly, Claimant 4 qualifies for a whistleblower award.

In reaching this conclusion, we have determined that it would be in the public interest and consistent with the protection of investors for the Commission to exercise our discretionary authority under Section 36(a) of the Exchange Act to waive compliance with the timing element of the first requirement of Rule 21F-4(c)(3). Claimant 4 does not satisfy that requirement because Claimant 4 did not report his/her allegations of misconduct to Respondent before or at the same time Claimant 4 reported to the Commission. Rather, Claimant 4 submitted a tip that

⁹ *Id.*

was received by the Commission approximately one month before Claimant 4 reported internally to Respondent. Claimant 4 then submitted a tip to the Commission within 120 days that included Claimant 4's internal report to Respondent.

Nevertheless, the principal objective of Rule 21F-4(c)(3)—to encourage internal reporting, thereby allowing a company the opportunity to address the conduct—was satisfied here. After Claimant 4 submitted his/her anonymous tip, Respondent investigated Claimant 4's allegations, identified problematic conduct, and reported the findings of its internal review to the Commission. The information Respondent shared with the Commission from its internal investigation contributed, in part, to Staff's decision to expand the Investigation to include misconduct in Location B; the information also supported, in part, the Covered Action's findings as to misconduct in Location B. Given these facts, it would be in the public interest and consistent with the protection of investors to waive the timing element of the first requirement of Rule 21F-4(c)(3) as to Claimant 4's award application.

Applying the award criteria specified in Rule 21F-6 to the facts and circumstances here, we find that a ***% award to Claimant 4 is appropriate. Additionally, the Covered Action addressed misconduct in regions other than Location B, and a large percentage of the monetary sanctions ordered against Respondent related to conduct other than the violations in Location B. Accordingly, and after considering Claimant 4's contributions relative to Claimant 2's and Claimant 3's contributions, we conclude that a ***% award to Claimant 4 is appropriate.¹⁰

D. Claimant 5

Claimant 5 does not qualify for an award.

First, the record demonstrates that the Investigation was opened more than three years before Claimant 5 submitted his/her first tip to the Commission. Thus, Claimant 5's information did not cause Staff to open the Investigation.

Second, the record demonstrates that the tips Claimant 5 submitted to the Commission regarding Location C did not cause Staff to inquire into different conduct as part of the Investigation or significantly contribute to the Investigation. According to the Initial Declaration, Staff did not interview Claimant 5, and none of Claimant 5's information helped advance the Investigation or was used in, or had any impact on, the Covered Action. Further, according to the Supplemental Declaration, none of Claimant 5's information was related to the findings of misconduct concerning ^{Redacted} in Location C in the Covered Action; to the extent that Claimant 5's information was related to the misconduct in Location C identified in the Covered Action, it was repetitive of information already known by Staff. The Supplemental

¹⁰ *Id.*

Declaration also confirms that Respondent had first self-reported information concerning alleged violative conduct in Location C in ^{Redacted} in ^{Redacted} Respondent provided a summary of its internal investigation in Location C to Staff. Thus, Claimant 5's tips, first submitted in ^{Redacted} did not result in the expansion of the Investigation to include misconduct in Location C.¹¹

Finally, Claimant 5's argument that a claimant may be eligible for an award even if not interviewed by Commission staff is unavailing. The fact that Claimant 5 was not interviewed by Staff is only one aspect of the record supporting our conclusion that Claimant 5's information did not significantly contribute to the Covered Action.

III. Conclusion

Accordingly, it is hereby ORDERED that Claimant 2 shall receive an award equal to ^{***}%, Claimant 3 shall receive an award equal to ^{***}%, and Claimant 4 shall receive an award equal to ^{***}% of the monetary sanctions collected in the Covered Action.¹² It is further ORDERED that the whistleblower award application of Claimant 5 for the Covered Action be, and hereby is, denied.

By the Commission.

Vanessa A. Countryman
Secretary

¹¹ Claimant 5 challenges a statement in the Initial Declaration that the conduct Claimant 5 alleged was not the same as the conduct that was the focus of the Investigation. The Supplemental Declaration clarifies that, to the extent Claimant 5's information was related to the misconduct in Location C identified in the Covered Action, it was repetitive of information already known by Staff.

¹² Claimant 2, Claimant 3, and Claimant 4 assert that they made Freedom of Information Act ("FOIA") requests for certain investigative files, including third-party communications concerning their information as part of their whistleblower award applications. Claimant 2, Claimant 3, and Claimant 4 state that they have not been provided with such documents. We decline the requests from Claimant 2, Claimant 3, and Claimant 4 that we consider certain investigative files, including third-party communications concerning their information, as part of the record. We have appropriately considered all materials contemplated by the whistleblower program rules in reaching our conclusion to grant awards to Claimant 2, Claimant 3, and Claimant 4. To the extent Claimant 2, Claimant 3, and Claimant 4 argue that they have not received documents pursuant to FOIA requests they filed with the Commission, those requests are beyond the scope of this whistleblower award proceeding. We note that FOIA requests must be submitted to the Commission's Office of FOIA Services (OFS), the centralized unit that handles all FOIA requests for the Commission and whose website provides procedures on submitting requests directly to OFS. *See* Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 95714 (Sept. 9, 2022).