

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 103171 / June 3, 2025

WHISTLEBLOWER AWARD PROCEEDING

File No. 2025-30

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In the Matter of the Claims for an Award

in connection with

Redacted

Redacted

Redacted

Redacted

Notices of Covered Actions: Redacted and Redacted

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS**

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending the denial of the whistleblower award claims jointly submitted by Redacted (“Claimant 1”) and Redacted (“Claimant 2”) (collectively, “Joint Claimants”) in connection with the above-referenced covered actions (the “Covered Actions”). The Joint Claimants filed a timely response contesting the preliminary denial.<sup>1</sup> For the reasons discussed below, the Joint Claimants’ award claims are denied.

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<sup>1</sup> See Securities Exchange Act of 1934 (“Exchange Act”) Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

## I. Background

### A. The Covered Actions

On [Redacted], the Commission instituted settled administrative cease-and-desist proceedings against [Redacted] (“Company”) alleging that the Company engaged in [Redacted] from at least [Redacted]. [Redacted], the Company announced that it would not be able to file [Redacted]. [Redacted], the Company’s audit committee announced that it concluded that its financial statements for fiscal years ending [Redacted] and their respective quarterly periods should not be relied on. On [Redacted], the Company filed a [Redacted] with the Commission that [Redacted] its fiscal year [Redacted] financial statements and certain financial data for fiscal years [Redacted]. The [Redacted] applied to approximately [Redacted] for the [Redacted] period. In its [Redacted], the Company also acknowledged [Redacted]. As a result of the misconduct, the Commission alleged that the Company violated multiple provisions of the Exchange Act, and among other relief, ordered the Company to pay over \$1 million in monetary sanctions.

On [Redacted], the Commission also announced settled administrative cease-and-desist proceedings against [Redacted], the Company’s founder and former Chief Executive Officer (“Executive”). The Executive received bonuses, incentive-based compensation, equity-based compensation, and realized profits from the sale of Company stock during the twelve-month period following the filings containing financial results that the Company [Redacted].

[Redacted]

The Office of the Whistleblower (“OWB”) posted the Notices for the Covered Actions (“NoCAs”) on the Commission’s public website inviting claimants to submit whistleblower award applications, and the Joint Claimants filed timely applications.

### B. The Preliminary Determination

The CRS issued a Preliminary Determination recommending that the Joint Claimants’ award claims be denied because the Joint Claimants’ information did not lead to the success 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.

### C. Joint Claimants' Response to the Preliminary Determination

Joint Claimants provided a timely request for reconsideration (“Response”). Joint Claimants principally argue the following: (1) they provided information to the Commission that identified the underlying conduct ultimately charged in the Covered Actions; (2) while the declaration provided by Enforcement staff states that staff were aware of the underlying conduct by the time of Joint Claimants’ <sup>Redacted</sup> supplemental submission, the declaration fails to identify when staff learned of the identity of the <sup>Redacted</sup> issues that formed the basis of the Covered Actions; (3) Claimant 1 was uniquely positioned at the Company to provide useful information and participated in a several hours long interview, in addition to providing emails, spreadsheets, and presentations to the Commission staff; (4) Joint Claimants provided a “roadmap” of the <sup>Redacted</sup> as well as the key persons involved, including information about the <sup>Redacted</sup> and Claimant 1’s supervisor and information that they claim was useful in drafting subsequent subpoenas; (5) it is unfair to ignore a whistleblower’s information in favor of obtaining it later through other sources, like the Company’s <sup>Redacted</sup>; (6) even if Joint Claimants’ information did not assist staff in the drafting of the <sup>Redacted</sup> subpoena, they are still entitled to an award because of the large amount of information and assistance provided; and (7) Joint Claimants were interviewed by Enforcement staff, suggesting that their information was useful in the Covered Actions.<sup>2</sup>

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<sup>2</sup> Joint Claimants also assert that to the extent Enforcement staff responds to the positions set forth in their Response, they will not be able to address those contentions, and as such, the Commission should not consider any supplemental declarations from the Enforcement staff. The Commission routinely considers additional information provided by the Enforcement staff in response to arguments made in claimants’ requests for reconsideration. Furthermore, supplemental declarations are provided to claimants who request the record and sign the requisite confidentiality agreement when they are provided with the Commission’s Final Order, and may use the information in the supplemental declaration in connection with any appeal. Joint Claimants also state that Enforcement staff disclosed their identity in connection with litigation against two non-settling defendants. According to the supplemental declaration obtained from the relevant Enforcement staff responsible for the Covered Actions, which we credit, any disclosure was made pursuant to the Commission’s discovery obligations in litigation and does not reflect the usefulness of their information in the Covered Actions. Further, Commission staff did not identify either of the Joint Claimants as possible witnesses in the litigation, as they lacked first-hand information about the alleged misconduct. Finally, Joint Claimants point out that Office of the Whistleblower (“OWB”) staff contacted their counsel about the NoCA postings. While OWB staff, as a courtesy, may contact claimants or their counsel, if represented, about a NoCA posting, in doing so, OWB is not making any judgment about whether the individual will be eligible for an award under the Commission’s whistleblower program rules. It is only the Commission, acting through the Commissioners, that determines whether a claimant is eligible for an award, and if so, the appropriate award percentage.

## II. Analysis

To qualify for an award under Section 21F of the Exchange Act, a whistleblower must have “voluntarily provided original information to the Commission that led to the successful enforcement of the covered . . . action.”<sup>3</sup> Rules 21F-4(c)(1) and (c)(2) specify that this “led to” requirement is satisfied if either the “[the claimant] gave the Commission original information that cause[d] the staff to . . . open an investigation . . . or to inquire concerning different conduct as part of a current examination or investigation” or “[the claimant] gave the Commission original information about conduct that was already under examination and investigation by the Commission . . . and [the] submission significantly contributed to the success of the action”.<sup>4</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. 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>5</sup>

Joint Claimants did not provide information that caused Enforcement staff to open the investigation or inquire into different conduct, as required under Rule 21F-4(c)(1). Enforcement staff opened the Matter Under Inquiry that resulted in the Covered Actions prior to receiving any information from the Joint Claimants. In <sup>Redacted</sup>, the Company announced that it would not be able to file its <sup>Redacted</sup> on time. On <sup>Redacted</sup>, the <sup>Redacted</sup> announced that it concluded that the financial statements for fiscal years ending <sup>Redacted</sup> <sup>Redacted</sup> and their respective quarterly periods should not be relied on. On the same day, approximately three weeks before Joint Claimants submitted their tip, Enforcement staff opened a Matter Under Inquiry into the Company. The Joint Claimants’ information also did not cause Enforcement staff to inquire into different conduct.

Nor did the Joint Claimants provide information that significantly contributed to the success of the Covered Actions, as required under Rule 21F-4(c)(2). Joint Claimants submitted a tip to the Commission, dated <sup>Redacted</sup>, which was received by the responsible Enforcement

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

<sup>4</sup> Joint Claimants do not argue, and the record does not support, that their information “led to” the success of the Covered Actions under Exchange Act Rule 21F-4(c)(3).

<sup>5</sup> *Order Determining Whistleblower Award Claims*, Release 90922 (Jan. 14, 2021) at 4; *see also Order Determining Whistleblower Award Claims*, Release 85412 (Mar. 26, 2019) at 9 (same).

staff in <sup>Redacted</sup> (“Initial Tip”). Enforcement staff met with Joint Claimants’ counsel on <sup>Redacted</sup> <sup>Redacted</sup>, and Joint Claimants submitted a supplemental submission on <sup>Redacted</sup> (“Supplemental Submission”). Enforcement staff met with Claimant 1 and his/her counsel on <sup>Redacted</sup>, and had a phone call with Claimant 1 and his/her counsel in <sup>Redacted</sup>.

According to a declaration provided by Enforcement staff, which we credit, none of Joint Claimants’ information was used in, or had any impact on, the investigation or resulting Covered Actions. Joint Claimants’ Initial Tip primarily focused on baseless and exaggerated projections, which was not the basis of the Covered Actions. While Joint Claimants’ Supplemental Submission provided some information regarding the transactions which the Company eventually <sup>Redacted</sup>, Enforcement staff was already aware of the underlying misconduct and had already commenced its normal investigative processes through which it obtained the documents and information to support the allegations in the Covered Actions. For example, on <sup>Redacted</sup> <sup>\*\*\*</sup> (one day after the Supplemental Submission), staff sent a subpoena to the Company, but it had already been drafted prior to receiving the Joint Claimants’ Supplemental Submission. Because staff was relying on the Company’s own public announcements and information from the Company, staff did not use or rely on any of the information provided by the Joint Claimants.

Turning to the arguments in Joint Claimants’ Response, neither of the Joint Claimants were involved in the alleged <sup>Redacted</sup> violations, and given the nature of their positions, they were unable to provide first-hand information on the <sup>Redacted</sup> that the Company eventually <sup>Redacted</sup>. As the Response acknowledges, Claimant 1 was not an accountant, and had no accounting function at the Company during the relevant time. According to a supplemental declaration prepared by the relevant Enforcement staff, which we credit, Claimant 1 was on the <sup>Redacted</sup> of the Company, and as such, was not privy to first-hand information on the <sup>Redacted</sup> at issue from either the business negotiation or accounting side. Claimant 2 was an <sup>Redacted</sup> and not privy to the internal transactions at the Company.

Joint Claimants’ argument that the Enforcement staff declaration is insufficient because it fails to identify the date when staff learned of the <sup>Redacted</sup> that formed the basis of the Covered Actions is unavailing; Joint Claimants are not entitled to internal investigative information.<sup>6</sup> Furthermore, the record supports the conclusion that Enforcement staff had received information about the misconduct from multiple sources prior to receiving information from Joint Claimants, including emails received from individuals other than Joint Claimants, shareholder class action lawsuits, and public announcements by the Company.<sup>7</sup> Moreover, it is

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<sup>6</sup> See *Order Determining Whistleblower Award Claim*, Release 99670 (Mar. 5, 2024) (rejecting Claimant 2’s argument that the record was insufficient because it did not identify the date when staff began inquiring into the conduct that formed the basis of the charges in the Covered Action).

<sup>7</sup> For example, prior to the Joint Claimants’ submission of information to the Commission, the Company had already

not dispositive that because the Joint Claimants were interviewed by Enforcement staff, that their information was ultimately useful in the Covered Actions. Enforcement staff routinely speaks to many individuals during the course of an investigation, and they do not all provide useful information.

Finally, while there may be overlap between the information provided by Joint Claimants and the charges in the Covered Actions, the record supports the conclusion that Enforcement staff did not use or rely on their information. As the Commission has previously stated, “the standard for award eligibility is not what the staff would have, or could have done in hypothetical circumstances but, rather, what impact the whistleblower’s information actually had on the investigation.”<sup>8</sup> Enforcement staff relied on information and documents provided by the Company, including in response to staff’s <sup>Redacted</sup> subpoena, as well as the results of the internal investigation conducted by the Company. None of Joint Claimants’ information contributed to the <sup>Redacted</sup> subpoena, and did not otherwise advance the investigation in any way. Joint Claimants did not provide helpful information about any witnesses, did not allow staff to save time and resources, and did not help staff recommend additional charges or charges against additional defendants. That Joint Claimants provided a large volume of information to and met with Commission staff, do not by themselves satisfy the “led to” requirement. Nor is it unfair to the Joint Claimants that Commission staff relied on other sources of information during the course of the investigation to build their case; as noted above, staff was already aware of the misconduct prior to receiving Joint Claimants’ information, Joint Claimants’ information was not useful and Joint Claimants lacked first-hand information about the underlying <sup>Redacted</sup> <sup>Redacted</sup> at issue.

For these reasons, the Joint Claimants’ information did not lead to the successful enforcement of the Covered Actions.

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publicly disclosed that <sup>Redacted</sup>  
<sup>Redacted</sup>  
<sup>Redacted</sup>  
<sup>Redacted</sup>

<sup>8</sup> See *Order Determining Whistleblower Award Claim*, Release 101915 (Dec. 16, 2024); see also *Order Determining Whistleblower Award Claim*, Release 99670 (Mar. 5, 2024) (rejecting claimants’ argument that their information must have been used in some way because their information had a factual nexus to the charges in the covered action); *Order Determining Whistleblower Award Claims*, Release 101451 (Oct. 28, 2024) (same).

### **III. Conclusion**

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

By the Commission.

Vanessa A. Countryman  
Secretary