

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 103225 / June 11, 2025

WHISTLEBLOWER AWARD PROCEEDING

File No. 2025-36

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In the Matter of the Claims for Awards

in connection with

Redacted

Redacted

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

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS**

The Claims Review Staff (“CRS”) issued Preliminary Determinations recommending the denial of the whistleblower award claims submitted by <sup>Redacted</sup> (“Claimant 1”), <sup>Redacted</sup> (“Claimant 2”) and <sup>Redacted</sup> (“Claimant 5”) (collectively “Claimants”) in connection with the above-referenced covered action (the “Covered Action”). All three Claimants filed timely responses contesting the preliminary denials.<sup>1</sup> For the reasons discussed below, the CRS’s recommendations are adopted and the award claims of Claimant 1, Claimant 2 and Claimant 5 are denied.

**I. Background**

**A. The Covered Action**

The Commission brought enforcement actions <sup>Redacted</sup>, including the above-referenced Covered Action. The Commission found that the respondents had violated <sup>Redacted</sup>

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, in violation of the federal

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<sup>1</sup> The CRS also recommended the denial of the award applications of two other claimants (“Claimants 3 and 4”) who did not contest the Preliminary Determinations. Accordingly, the Preliminary Determinations with respect to Claimants 3 and 4 became the Final Order of the Commission through operation of Exchange Act Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f).

securities laws, and  
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. Among other relief, the Commission ordered that the respondents pay  
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The Office of the

Whistleblower (“OWB”) posted a Notice for the Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days. Claimants filed timely whistleblower award claims.

### B. The Preliminary Determinations

The CRS issued Preliminary Determinations recommending that the Claimants’ award claims be denied because their information did not lead to the success of the Covered Action. The CRS determined that the Commission investigation that led to the bringing of the Covered Action (the “Covered Action Investigation”) was not opened based on information provided by Claimants. Further, Claimants’ information was not received or used by the staff handling the Covered Action Investigation,<sup>2</sup> and those staff members otherwise had no contact with the Claimants.

### C. Claimants’ Responses to the Preliminary Determinations

Claimants 1, 2, and 5 submitted timely written responses contesting the Preliminary Determinations.

#### 1. Claimant 1

Claimant 1 makes primarily three arguments in his/her reconsideration request. First, Claimant 1 contends that the Preliminary Determination gave inadequate recognition to a news media article that had specifically highlighted the “pertinent” tips Claimant 1 had provided to the Commission. Second, Claimant 1 charges that the Preliminary Determination gave no credit to the “substantial role” and “critical support” his/her submissions played in the success of the Covered Action, most particularly in warning the respondents “that they could not avoid the truth since [Claimant 1] had already provided the truth to the Commission (which they knew because of [the aforementioned news article]).” Third, Claimant 1 asserts that in light of his/her “numerous on-point and specific submissions” made before the Covered Action Investigation was opened, Claimant 1 is “entitled to a strong presumption that [his/her] submissions – which irrefutably were reviewed by senior enforcement counsel at the Commission – played a meaningful role in prompting further investigation, and such a presumption should not be treated as rebutted by cursory contrary assertions by SEC counsel.”

#### 2. Claimant 2

Claimant 2,  
had first become aware of the problem with the respondent’s

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, states that he/she  
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<sup>2</sup> The Covered Action Investigation consisted of an investigation  
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Redacted at the respondent and that Claimant 2 then alerted the respondent internally that the program’s participants were Redacted

Redacted . Following Redacted that appeared to confirm Claimant 2’s allegations, Claimant 2 was asked to assist the internal investigation. During Claimant 2’s participation in this internal investigation, Claimant 2 states that he/she again Redacted and Redacted alerted Redacted and reported these concerns Redacted .

Despite these warnings, Claimant 2 contends, the respondent took no action to stop the practice. At this point, Redacted after Claimant 2 had first reported his/her allegations internally, Claimant 2 decided to report his/her concerns to the Commission and another regulatory entity (the “Other Regulatory Entity”). According to Claimant 2, an enforcement attorney with the Other Regulatory Entity contacted Claimant 2, which led to Claimant 2 providing the Other Regulatory Entity with more detailed information, including during “three phone meetings, each lasting over an hour,” with the Other Regulatory Entity attorney “and an unknown representative from the SEC.”<sup>3</sup> Claimant 2 asserts that the findings in the Covered Action are “directly support[ed]” by the tip Claimant 2 provided to the Commission via the Commission’s Tips, Complaints, and Referrals system (“TCR System”)<sup>4</sup> and in his/her subsequent phone interviews with the Other Regulatory Entity attorney and the “unknown” SEC official.<sup>5</sup>

### 3. Claimant 5

Claimant 5 argues in his/her reconsideration request that Claimant 5’s contributions to an earlier Commission enforcement action Redacted (the “Other Entity”) for similar Redacted misconduct was a “pivotal catalyst” and “foundation” for the Commission’s opening of the Covered Action Investigation. Claimant 5 asserts that his/her internal whistleblowing to the Other Entity led the Other Entity to self-report these violations to the Commission which, in turn, led the Commission to open an investigation into the Other Entity (the “Other Entity Investigation”) and, ultimately, with the assistance of Claimant 5’s later detailed tip and other information, including sworn testimony, led to the success of the Commission’s enforcement action against the Other Entity (the “Other Entity

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<sup>3</sup> In Claimant 2’s award application, Claimant 2 states that he/she had “at least 4-5 extensive meetings” with the Other Regulatory Entity and does not specifically mention the participation of any SEC representatives.

<sup>4</sup> The TCR System is the Commission’s electronic database, which records and stores information received from whistleblowers and others about potential securities law violations and records staff action taken with regard to tips, complaints, and referrals (“TCRs”) entered into the system.

<sup>5</sup> Claimant 2 further argues that since Claimant 2 had escalated his/her internal reporting of the Covered Action respondent’s wrongdoing to his/her supervisor and then waited more than 120 days to submit his/her tip to the Commission, that “qualifies [Claimant 2] as a whistleblower under the 120-day exception” of Exchange Act Rule 21F-4(b)(4)(v)(C). The Commission does not address this contention since, regardless of its disposition, as discussed below, Claimant 2’s information was not received by and did not contribute to the Covered Action Investigation or lead to the success of the Covered Action, as required under Rule 21F-4(c).

Action”).<sup>6</sup> Claimant 5 notes that one of the staff declarations in the record specifically stated the Covered Action Investigation was opened when staff assigned to a \*\*\* investigation Redacted discovered, in response to an investigative subpoena of the Other Entity, the existence of Redacted

Redacted . Claimant 5 argues that this discovery, along with, to a lesser extent, information the staff learned from news coverage and conversations with other SEC attorneys, showed that the Other Entity was not the only Redacted that was committing Redacted . Claimant 5 maintains, however, that this declaration failed to disclose the key impact Claimant 5’s contributions to the Other Entity Investigation had on the decision to open the Covered Action Investigation, noting that while the declarant proposed the opening of the Covered Action Investigation, the declarant was not the person who actually authorized the opening of the investigation. Claimant 5 asserts that the record needs to include a sworn declaration from the person(s) who did authorize the opening of the Covered Action Investigation and that this declaration would show the staff’s awareness of the critical importance of the Other Entity’s self-report and the information Claimant 5 subsequently provided to the Other Entity Investigation in the decision to open the Covered Action Investigation. Claimant 5 also argues that the reason the Other Entity was able to Redacted in response to the Commission’s subpoena was because the Other Entity Redacted as a direct result of Claimant 5 having reported his/her allegations to the Other Entity.

Claimant 5 further argues that, even if the Covered Action Investigation staff did not receive his/her information, Claimant 5’s information should, nevertheless, be credited as having satisfied the “led to” requirements of Rule 21F-4(c)(3),<sup>7</sup> which credit a whistleblower who reports original information through an entity’s internal compliance procedures with the information the entity then provides the Commission based on the whistleblower’s information and/or the results of the entity’s investigation initiated in response to the whistleblower’s information.<sup>8</sup> Claimant 5 asserts that the information the Commission received from the Other Entity’s self-report should be credited to Claimant 5 under the provisions of this rule and, given the purported importance of the self-report to the decision to open the Covered Action Investigation, Claimant 5 should be deemed to have provided information that led to the success of the Covered Action.

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<sup>6</sup> The Commission issued a final order awarding Claimant 5 a Redacted whistleblower award for his/her substantial assistance in the Other Entity Action. Redacted

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

<sup>8</sup> Claimant 5 disputes the CRS’s determination that he/she did not qualify under this provision because Claimant 5 provided the information to the Commission more than 120 days after providing it to the Other Entity. Claimant 5 asserts that he/she did provide the Commission with information within 120 days after providing it to the Other Entity. Claimant 5 requests that, if he/she were deemed to have not provided information to the Commission within 120 days of providing it to the Other Entity, the Commission waive the 120-day requirement because of extraordinary circumstances, namely that he/she was retaliated against by the Other Entity and the failure of Claimant 5’s then-attorney to alert Claimant 5 to the 120-day requirement for filing a TCR.

Claimant 5 additionally contends that he/she is entitled to an award for the Covered Action since the Other Entity Action, for which Claimant 5 received a whistleblower award (the “Other Entity Action Award”), shares “the same nucleus of operative facts” with the Covered Action and thus, pursuant to Exchange Act Rule 21F-4(d)(1), 17 C.F.R. § 240.21F-4(d)(1), is deemed to be the same action for purposes of determining whistleblower award eligibility for the Covered Action. Claimant 5 disputes the CRS’s determination that the Other Entity Action did not arise from the same nucleus of operative facts as the Covered Action because the Other Entity Action involved different time periods and different actors than those involved in the Covered Action. Claimant 5 argues that, in fact, the Other Entity Action and the Covered Action “constitute one and the same action” and that Claimant 5, therefore, is eligible to receive a whistleblower award for the Covered Action based on his/her contributions to the Other Entity Action.

Claimant 5 also contends that <sup>Redacted</sup> <sub>Redacted</sub> was based on Claimant 5’s whistleblowing, that Claimant 5’s information established the “full dimension and context of the misconduct,” and that the Commission used the Other Entity Action as the “template” for, and his/her “information contributed to the process, findings <sup>Redacted” in, the investigations and enforcement actions that followed the Other Entity Action.</sup>

Claimant 5 next asserts that the Commission’s press release announcing the Other Entity Action specifically notes that <sup>Redacted</sup> <sub>Redacted</sub>, and since Claimant 5 provided important information that helped the Commission to bring the Other Entity Action (for which the Commission awarded him/her the Other Entity Action Award), Claimant 5 should also receive credit for the investigation that resulted in the bringing of the Covered Action.

Claimant 5 also points to the fact that one of the supervisors of an investigation that resulted in the bringing of the Other Entity Action, and who attended Claimant 5’s sworn testimony in that investigation, is also listed as a supervisor in the press release that announced the Commission enforcement actions brought <sup>Redacted</sup> <sub>Redacted</sub>. Claimant 5 contends that this supervisor must have transmitted to the staff that opened the Covered Action Investigation the issues Claimant 5 raised in his/her testimony and helped approve, shape, and assist with the decision to open the investigation.

Next, Claimant 5 argues that he/she should receive an award because Claimant 5’s information caused the news coverage of <sup>Redacted</sup> <sub>Redacted</sub>, which contributed to the staff’s decision to open the Covered Action Investigation.

Finally, Claimant 5 argues that the materials he/she received in response to Claimant 5's request for the record materials are insufficient and should be supplemented with additional materials.<sup>9</sup>

## 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>10</sup> Original information will be deemed to lead to a successful enforcement action if either: (i) the original information caused the staff to “commence an examination, open an investigation . . . or to inquire concerning different conduct as part of a current examination or 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>11</sup> or (ii) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”<sup>12</sup> In determining whether a whistleblower's 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>13</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>14</sup>

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<sup>9</sup> Among the materials that Claimant 5 requests be made a part of the record are: (1) the identity of all SEC personnel who viewed or received copies of Claimant 5's tip; (2) all internal and external communications from SEC personnel who implemented and approved the Covered Action Investigation, including the SEC's Chairman, the Director of the Division of Enforcement, and other senior Commission officials; (3) the identity of the Commission personnel who <sup>Redacted</sup> with the Other Entity and the <sup>Redacted</sup> charged in the Covered Action; (4) whether <sup>Redacted</sup> were based on the Other Entity Action, and whether these personnel were familiar with Claimant 5's information; (5) SEC records of quarterly case review meetings, other staff meetings or communications, investigative plans, and Hub System reports that reference Claimant 5's information; and (6) whether any SEC commissioner reviewed the Covered Action preliminary determination in advance of it being issued.

<sup>10</sup> Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

<sup>11</sup> Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

<sup>12</sup> See Exchange Act Rule 21-F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

<sup>13</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>14</sup> Exchange Act Rel. No. 85412 at 8-9.

As an initial matter, we note that the record includes several sworn declarations from the Enforcement staff, which we credit,<sup>15</sup> including: (1) a declaration prepared by the staff attorney who proposed the opening of, and worked on, the Covered Action Investigation; (2) two declarations from a senior Enforcement attorney (one of which was prepared in response to contentions raised by Claimant 5 in his/her reconsideration request) who reviewed the first declarant’s proposal and was consulted on the decision to open the Covered Action Investigation; and (3) three declarations from a senior Enforcement attorney who supervised the Other Entity Investigation, as well as portions of the Covered Action Investigation, including the bringing of the Covered Action. Based on our review of the record, including the multiple declarations, we find that Claimants 1, 2, and 5 did not provide information that led to the success of the Covered Action.

The Claimants suggest that because their information concerned the same sort of misconduct that was found to have occurred in the Covered Action, their information must have been used by the responsible Enforcement staff that investigated and worked on the Covered Action. However, the standard for award eligibility is not what the staff would have or could have done in hypothetical circumstances, but, rather, what impact a claimant’s information actually has on the investigation.<sup>16</sup> That the Claimants’ information bears a factual nexus to the findings in the Covered Action, and that Claimant 5’s information was important to the success of the Other Entity Action, does not mean that their information “led to” the success of the Covered Action. Rather, the record, including multiple sworn staff declarations, supports the conclusion that none of the Claimants provided information to the Commission that caused the opening of the Covered Action Investigation or significantly contributed to the Covered Action Investigation or the success of the Covered Action.

**A. Contentions Specifically Raised by Claimant 1**

Claimant 1 asserts that the information he/she provided to a news media reporter <sup>Redacted</sup> and that this must have contributed to the Commission’s decision to open the Covered Action Investigation and influenced the respondent’s decision to promptly resolve the matter with the Commission.<sup>17</sup> While the referenced news article does note that an anonymous whistleblower (Claimant 1 states that he/she was the anonymous whistleblower) informed the reporter <sup>Redacted</sup>,

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<sup>15</sup> The whistleblower rules contemplate that the record upon which an award determination is made shall consist of, as relevant here, sworn declaration(s) provided by the 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).

<sup>16</sup> Order Determining Whistleblower Award Claims, Rel. No. 99670 (March 5, 2024); Order Determining Whistleblower Award Claim, Release No. 34-98655 (Sept. 29, 2023); Order Determining Whistleblower Award Claim, Rel. No. 34-97408 (May 1, 2023); Order Determining Whistleblower Award Claim, Rel. No. 34-96657 (Jan. 13, 2023).

<sup>17</sup> Claimant 1 asserts that because of his/her revelations, the respondent knew by the time the Covered Action Investigation was opened, that “the matter would not end well for it, which undoubtedly promoted [the respondent]’s cooperative and conciliatory posture.”

and, as noted, the staff declarations note that the staff read news coverage about <sup>Redacted</sup> prior to opening the Covered Action Investigation, the plain fact is that the several staff declarations all state that the Covered Action Investigation staff did not receive Claimant 1's information. Regardless of what Claimant 1 may have told a news <sup>Redacted</sup> reporter or the impact that such media revelations may have had on the respondent's decision <sup>Redacted</sup> Exchange Act Rule 21F-4(c) requires that a whistleblower provide his or her information to the Commission for it to be considered to have led to a successful enforcement action.

**B. Contentions Specifically Raised by Claimant 2**

Claimant 2 asserts that he/she provided important information to the Commission in his/her TCR and to an attorney from the Other Regulatory Entity and an "unknown representative from the SEC" during subsequent telephone conversations. However, the record shows that Claimant 2's TCR was closed with a disposition of "No Further Action"<sup>18</sup> and not forwarded to the Covered Action Investigation staff. Further, two staff declarations from supervisors of the Covered Action Investigation attest that while the Covered Action Investigation staff did communicate with, and may have received information from, the Other Regulatory Entity, the Other Regulatory Entity did not send the staff any information from Claimant 2. In addition, in response to Claimant 2's assertion in his/her reconsideration request of having communicated with an "unknown representative from the SEC," one of the Covered Action Investigation supervisors provided an additional sworn declaration stating that (1) the supervisor was not familiar with the Other Regulatory Entity attorney named by Claimant 2 and did not find any reference to the Other Regulatory Entity attorney in the supervisor's emails; and (2) the supervisor was unaware of anyone from the Covered Action Investigation staff having a phone conversation with Claimant 2.

**C. Contentions Specifically Raised by Claimant 5**

Contrary to Claimant 5's supposition, the Other Entity Action resulted from <sup>\*\*\*</sup> separate Commission investigations, including the Other Entity Investigation to which he/she had submitted his/her information and provided testimony. The several declarations establish that it was the staff from a different investigation, and not from the Other Entity Investigation, that recommended the opening of the Covered Action Investigation. While one of the supervisors of the Other Entity Investigation also supervised portions of the Covered Action Investigation, including the bringing of the Covered Action, and did review Claimant 5's information and attended Claimant 5's sworn testimony in connection with the Other Entity Investigation, this supervisor provided a sworn declaration, which we credit, attesting that to the best of the supervisor's recollection, Claimant 5 did not provide information to the Other Entity Investigation staff showing that <sup>Redacted</sup>. Nor, as noted, did the staff that opened the Covered Action Investigation receive Claimant 5's information from any other source.

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<sup>18</sup> A "No Further Action" disposition indicates that the staff will not take any additional steps with respect to a TCR unless subsequent information leads staff to reopen or reexamine that TCR.

Claimant 5 asserts that the staff declarations were deficient because they did not include a declaration from the supervisor(s) who approved the opening of the Covered Action Investigation, which, Claimant 5 argues, would have shown that the decision to open the Covered Action Investigation was “shaped by [the staff declarant’s] supervisors’ knowledge of [Claimant 5’s] information” and “inevitably influenced by awareness of [Claimant 5’s] information.” However, OWB obtained a supplemental sworn declaration from the declarant’s supervisor and, as noted, from a supervisor of the Other Entity Investigation (who also supervised portions of the Covered Action Investigation, including the bringing of the Covered Action) to address Claimant 5’s assertions. The declarant’s supervisor confirmed the statements in the supervisor’s first declaration that the decision to open the Covered Action Investigation was not based on any information that the staff received from Claimant 5 nor from information learned from the Other Entity self-report.<sup>19</sup> And, as noted above, the Other Entity Investigation supervisor attested that Claimant 5 did not provide information to the Other Entity Investigation staff showing that  
Redacted

Claimant 5 asserts that he/she should receive credit for the information and assistance he/she provided that contributed to the Other Entity Action since that action led to the Commission investigating  
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Redacted the subject of the Covered Action. However, the Other Entity Investigation supervisor stated that that Claimant 5 did not provide information to the Other Entity Investigation staff showing  
Redacted

. Further, the declarations from the staff who participated in the decision to open the Covered Action Investigation and the supervisor of the Other Entity Investigation state that the Other Entity Investigation staff did not share Claimant 5’s information with the staff that opened the Covered Action Investigation nor advise the staff that opened the Covered Action Investigation  
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Indeed, the Other Entity Investigation supervisor stated that he/she did not recall telling the staff who participated in the opening of the Covered Action Investigation about the  
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<sup>19</sup> The supervisor confirms that, like the first declarant, he/she was aware that the Other Entity had sent a self-report to the Commission but was not aware of the specific details of the self-report. In addition, the supervisor states that, at the time of the conception and opening of the Covered Action Investigation, the supervisor, like the first declarant, was not aware of Claimant 5’s TCR or of the existence of its underlying factual allegations and did not become aware that Claimant 5 had submitted his/her whistleblower complaint to the Commission until well after the opening of the Covered Action Investigation.

Both declarants note that they had limited discussions with staff from the Other Entity Investigation prior to the opening of the Covered Action Investigation. The supervisor notes that these discussions were general in nature and did not delve into the specific information that that staff had received or learned from the Other Entity. Moreover, the supervisor attests that during these discussions, the Other Entity Investigation staff did not tell the supervisor  
Redacted

. The other declarant states that his/her discussions with the Other Entity Investigation staff prior to the opening of the Covered Action Investigation only helped to inform his/her understanding of the \*\*\* problems at the Other Entity in relation to  
Redacted and that he/she did not learn about the existence of \*\*\* problems at companies other than the Other Entity from the Other Entity Investigation staff.

Redacted

that the Other Entity

Investigation staff received, nor did he/she recall mentioning Claimant 5 to them or the information Claimant 5 provided to the Other Entity Investigation staff.

This is not to denigrate Claimant 5's contribution to the success of the Other Entity Action, a contribution that we recognized with an order directing the payment of a whistleblower award to Claimant 5.<sup>20</sup> However, the issue here in assessing Claimant 5's eligibility to receive a whistleblower award is not the importance of Claimant 5's contribution to the Other Entity Investigation and the Other Entity Action but, rather, whether Claimant 5's submission of information to the Commission caused the staff to open the Covered Action Investigation, inquire concerning different conduct as part of a current examination or investigation or provided information that significantly contributed to the success of the Covered Action. We conclude that Claimant 5's information did not cause the staff to open the Covered Action Investigation, inquire concerning different conduct as part of a current examination or investigation, or significantly contribute to the Covered Action Investigation or the success of the Covered Action.

We also reject Claimant 5's argument that he/she is entitled to awards for the Covered Action, since the Covered Action shares "the same nucleus of operative facts" with the Other Entity Action. While the Other Entity Action concerned similar types of misconduct as that determined to have occurred in the Covered Action, the misconduct in the Other Entity Action involved different actors and somewhat different time periods<sup>21</sup> than that involved in the Covered Action.<sup>22</sup> Thus, we find that the Covered Action did not arise from the same nucleus of operative facts as the Other Entity Action.

We further reject Claimant 5's assertion that he/she is eligible for an award because the Commission allegedly used the resolution of the Other Entity Action as a template for the settlement of the Covered Action. 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>23</sup> Rules 21F-4(c)(1) and

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<sup>20</sup> See *supra* note 6.

<sup>21</sup> While the Other Entity Action and the Covered Action concerned misconduct that occurred from <sup>\*\*\*</sup> Redacted, the misconduct in the Other Entity Action continued through Redacted and the misconduct in the Covered Action continued through Redacted

<sup>22</sup> See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 98340 (Sept. 11, 2023) at 4 ("While the Associated Actions involved similar misconduct related to the Covered Action, the time periods of the misconduct in each case were different and they each involve different actors [and] [a]s a result, the Associated Actions do not arise from the same nucleus of operative facts and should not be aggregated together or with the Covered Action for purposes of making an award determination under Rule 21F-4(d)(1)"); Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 96324 (Nov. 16, 2022) at 2 ("The record demonstrates that the Covered Action and the Second Action involved different and unrelated parties and transactions, which Claimant concedes. The Second Action also was brought more than two years after the Covered Action. That the two enforcement proceedings allege similar violations of law does not mean that they arose from the same nucleus of operative facts.").

<sup>23</sup> Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

(c)(2) specify that this “led to” requirement is satisfied if either “you 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 “[y]ou gave the Commission original information about conduct that was already under examination and investigation by the Commission . . . and your submission significantly contributed to the success of the action.”<sup>24</sup> The focus of the inquiry is on claimant’s information, and Claimant 5’s argument that the Other Entity Action served as a template for the Commission’s settlement of the Covered Action does not address whether the *information* provided by Claimant 5 led to the success of the Covered Action under Rules 21F-4(c)(1) and (c)(2). As discussed, the information Claimant 5 submitted to the Commission was not shared with the staff that opened the Covered Action Investigation and was not helpful to the staff that worked on the Covered Action. Thus, the Commission need not decide whether the Other Entity Action was a template for the settlement of the Covered Action since Claimant 5’s information did not lead to the success of the Covered Action. Further, an interpretation that would grant an award for a template untethered to specific fact allegations would undermine the administrability of the whistleblower program by “introducing speculative and complex causal chains that would be difficult and impracticable in many instances for the Commission to investigate and evaluate.”<sup>25</sup>

Similarly, while Claimant 5 does not specify what is meant by providing a “template” or “playbook” for the Covered Action, even if Claimant 5 can be broadly construed to be arguing that he/she should receive an award based on speculation that the Other Entity Action pointed to a general area of enforcement interest though untethered to any specific information, that argument fails for the additional reason that such a submission does not qualify as “original information” with respect to the Covered Action. Only “*original information*” that “led to the successful enforcement of the covered . . . action” can qualify a claimant for an award.<sup>26</sup> Original information consists of either “independent knowledge” or “independent analysis.” Independent knowledge means “factual information in [claimant’s] possession that is not derived from publicly available sources.”<sup>27</sup> Independent analysis means claimant’s “examination and evaluation of information that may be publicly available, but which reveals information that is not generally known or available to the public.”<sup>28</sup> Speculation as to the potential impact of a claimant’s submission regarding another action on general areas of enforcement interest untethered to any specific fact allegations from the award claimant regarding the covered action does not satisfy that threshold. Because such a submission would not qualify Claimant 5 for an award in any case, the Commission need not decide whether Claimant 5’s submission amounts to a “template” or “playbook” as described in this paragraph

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<sup>24</sup> Claimant’s eligibility for an award under Rule 21F-4(c)(3) is addressed separately below.

<sup>25</sup> See Exchange Act Release No. 91253 (Mar. 4, 2021).

<sup>26</sup> Exchange Act Section 21F(b)(1).

<sup>27</sup> Exchange Act Rule 21F-4(b)(2), 17 C.F.R. § 240.21F-4(b)(2).

<sup>28</sup> Exchange Act Rule 21F-4(b)(3), 17 C.F.R. § 240.21F-4(b)(3).

or served as a “template” or “playbook” for the Covered Action.

Regarding Claimant 5’s argument that he/she is eligible for a whistleblower award under Exchange Rule 21F-4(c)(3)<sup>29</sup> for the information the Other Entity provided the Commission as a result of Claimant 5 having first reported internally to the Other Entity, Claimant 5 does not meet the requirements of this rule. Rule 21F-4(c)(3) provides that if:

- \* a whistleblower reports original information through an entity’s internal whistleblower, legal or compliance procedures before or at the same time he or she reports it to the Commission;
- \* the entity provides the Commission with the whistleblower’s information or with the results of an investigation initiated in response to the whistleblower’s information;
- \* the information provided by the entity to the Commission “led to” successful enforcement under the criteria of Rule 21F-4(c)(1) or (c)(2) discussed above; and
- \* the whistleblower submits the same information to the Commission within 120 days of providing it to the entity,

then the whistleblower will receive full credit for the information provided by the entity as if the whistleblower had provided the information to the Commission.

While Claimant 5 satisfied the first two requirements of Rule 21F-4(c)(3) – he/she reported internally through the Other Entity’s internal whistleblower, legal, or compliance procedures before or at the same time he/she reported it to the Commission, and the Other Entity provided the Commission with the results of an investigation initiated in response to Claimant 5’s information – Claimant 5 did not satisfy the third requirement of the rule – that the information the entity provided to the Commission satisfied the “led to” requirements of either paragraph (c)(1) (caused the Commission to commence an examination, open an investigation, reopen an investigation that the Commission had closed, or to inquire concerning different conduct as part of a current examination or investigation), or (c)(2) of the rule (as relevant here, significantly contributed to the success of the action). First, several staff declarations attested that no information from Claimant 5 was used in, or had any impact on, the charges brought by the Commission in the Covered Action. Second, the Other Entity Investigation supervisor also attested that Claimant 5 did not provide information to the Other Entity Investigation staff showing that

Redacted . Finally, both the staff attorney who proposed the opening of the Covered Action Investigation and that staff attorney’s supervisor stated in their respective declarations that, while they were aware at the time the Covered Action Investigation was opened that the Other Entity Investigation had been opened Redacted based on a self-report the Other Entity had sent the Commission, they were not aware of the specific details of the self-report. While the supervising attorney had discussions with staff who worked on the Other Entity Investigation, including the Other Entity Investigation supervisor, both supervisors

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<sup>29</sup> Exchange Act Rule 21F-4(c)(3), 17 C.F.R. § 240.21F-4(c)(3).

attested that the discussions were “general in nature” and did not extend to <sup>Redacted</sup> <sup>Redacted</sup> or into the specific information that the Other Entity Investigation staff had received or learned from the Other Entity. Rather, both the staff attorney and that attorney’s supervisor attested that the Covered Action Investigation was opened as a result of the Covered Action Investigation staff’s receipt, in response to its investigative subpoena to the Other Entity,<sup>30</sup> of information showing that <sup>Redacted</sup>

<sup>\*\*\*</sup> , as well as their discussions with other SEC attorneys (none of whom provided them with information from Claimant 5 or detailed information about the Other Entity’s self-report), and in reading news coverage indicating that similar conduct had taken place <sup>Redacted</sup> <sup>\*\*\*</sup> . Thus, Claimant 5’s tip and the Other Entity’s self-report did not cause the opening of the Covered Action Investigation, nor, as multiple staff declarations attest, did it contribute to the Covered Action Investigation itself or to the success of the Covered Action.<sup>31</sup>

We also reject Claimant 5’s argument that he/she should receive an award because Claimant 5’s information caused news coverage of <sup>Redacted</sup> , which contributed to the decision to open the Covered Action Investigation. Exchange Act Rule 21F-4(c) requires that information must be submitted to the Commission, not the news media, to qualify as information that led to the success of a covered action.

Finally, Claimant 5’s argument regarding the alleged incompleteness of the record and his/her need to review additional materials is inapposite, and we deny Claimant 5’s request for additional documents. The whistleblower rules permit an award claimant to request and to receive a copy of the materials that formed the basis of the Preliminary Determination<sup>32</sup> but, as we have previously pointed out, “the whistleblower rules do not authorize a claimant to go on a fishing expedition to . . . obtain copies of the SEC’s entire investigative file.”<sup>33</sup> Similarly, the

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<sup>30</sup> This subpoena was not issued by the staff on the Other Entity Investigation and was separate and apart from that investigation.

<sup>31</sup> Regarding the fourth requirement of Rule 21F-4(c)(3) – that the whistleblower submit the same information to the Commission within 120 days of providing it to the entity – Claimant 5 argues that the Commission should waive or grant an exemption for his/her arguable failure to have submitted the information within 120 days of providing it to the entity. We do not address this contention since the third requirement of Rule 21F-4(c)(3) was not met and, thus, the rule is inapplicable regardless of whether a waiver or exemption were granted.

<sup>32</sup> The Rules state that the record upon which an award determination is made shall consist of sworn declarations provided by the relevant Commission staff, in addition to the publicly available materials related to the particular 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. § 240.21F12(a). There is no basis to disregard Rule 21F-12(a) and expand the record to include any of the additional documents requested by Claimant 5. *See* Exchange Act Rule 21F-12(b), 17 C.F.R. § 240.21F-12(b) (“These rules do not entitle claimants to obtain from the Commission any materials (including any pre-decisional or internal deliberative process materials that are prepared exclusively to assist the Commission in deciding the claim) other than those listed in paragraph (a) of this section [*i.e.*, Rule 21F 12(a)].”

<sup>33</sup> Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 94647 (Apr. 8, 2022) at 5; Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 88973 (May 29, 2020) at 5. *See also*

rules do not permit a claimant to investigate, or cause the Commission to investigate, how the staff utilized the information it received from a claimant.<sup>34</sup> The evidence in the record demonstrates that Claimant 5 requested and then was properly sent the record materials that formed the basis for the Preliminary Determinations.<sup>35</sup> Claimant 5 is not entitled to any extra-record materials.

### **III. Conclusion**

Accordingly, it is hereby ORDERED that the whistleblower award applications of Claimants 1, 2 and 5 in connection with the Covered Action be, and they hereby are, denied.

By the Commission.

Vanessa A. Countryman  
Secretary

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Exchange Act Rule 21F-12(b), 17 C.F.R. § 240.21F-12(b) (noting that the whistleblower rules “do not entitle claimants to obtain from the Commission any materials (including any pre-decisional or internal deliberative process materials that are prepared exclusively to assist the Commission in deciding the claim) other than those listed in paragraph (a) of this section”).

<sup>34</sup> Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 94647 (Apr. 8, 2022) at 5.

<sup>35</sup> The record materials include redacted versions of four staff declarations (which were redacted to protect the confidentiality of the other claimants), Claimant 5’s Form WB-APP, and Claimant 5’s TCR. Because Claimant 5 had previously submitted the Form WB-APP and the TCR to the Commission, those documents were omitted from the record package that OWB sent to Claimant 5; however, the Form WB-APP and the TCR are still part of the record.