

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 100971 / September 9, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22080

In the Matter of

AppFolio, Inc.,

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against AppFolio, Inc. (“AppFolio” or “Respondent”).

II.

In anticipation of the institution of these proceedings, AppFolio has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, AppFolio consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and AppFolio’s Offer, the Commission finds that:

Respondent

1. **AppFolio**, a Delaware corporation based in Santa Barbara, California, provides cloud-based property management software for the real estate industry. AppFolio’s common stock

is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on the Nasdaq Stock Market under the ticker “APPF.”

Facts

A. Statutory and Regulatory Framework Protecting Whistleblowers

2. The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), enacted on July 21, 2010, amended the Exchange Act by adding Section 21F, “Whistleblower Incentives and Protection.” The congressional purpose underlying these provisions was “to encourage whistleblowers to report possible violations of the securities laws by providing financial incentives, prohibiting employment-related retaliation, and providing various confidentiality guarantees.” *See Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934*, Release No. 34-64545, at p. 197 (Aug. 12, 2011).

3. To fulfill this congressional purpose, the Commission adopted Rule 21F-17, which provides in relevant part:

(a) No person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement . . . with respect to such communications.

Rule 21F-17 became effective on August 12, 2011.

B. AppFolio’s Employment, Settlement, and Consulting Services Agreements

4. As a regular part of its business, AppFolio enters into employment agreements with employees and consulting services agreements with independent contractors. These agreements define the rights and responsibilities of the employee or contractor during their working relationship with the company and after their departure.

5. From time to time, AppFolio enters into settlement agreements with former employees. These settlement agreements are contracts that resolve an actual or potential legal dispute between the company and the former employee.

6. On September 15, 2021, and February 8, 2023, AppFolio entered into two employment agreements that required employees to waive their right to recover a monetary award for participating in an investigation by a government agency. Specifically, each of these agreements required the employee to execute a general release following the end of their employment that, while expressly permitting participation in government whistleblower programs, also required the employee to waive their right to a potential award. These general releases stated:

I agree that I hereby waive all rights to sue or obtain equitable, remedial or punitive relief from any or all Released Parties of any kind whatsoever in respect of any

Claim, including, without limitation, reinstatement, back pay, front pay, and any form of injunctive relief. Notwithstanding the above, I further acknowledge that I am not waiving and am not being required to waive any right that cannot be waived under law, including the right to file an administrative charge or participate in an administrative investigation or proceeding; **provided, however, that I disclaim and waive any right to share or participate in any monetary award resulting from the prosecution of such charge or investigation or proceeding.**

(Underline in original. Emphasis added.)

7. On February 28, 2022, AppFolio entered into one settlement agreement that, while expressly permitting a former employee to participate in government whistleblower programs, required him to waive his right to recover a potential monetary award. The agreement stated:

Excluded from this waiver and release is any claim or right that cannot be waived by law, including all claims arising after the date of this Agreement and the right to file a charge with or participate in an investigation conducted by an administrative agency, including but not limited to, claims for worker's compensation and unemployment insurance benefits. **However, [employee] is releasing his right to recover any monetary or non-monetary relief (including but not limited to compensatory, liquidated, or punitive damages, attorney's fees or costs) in connection with a charge and/or investigation filed or initiated by him, another individual, group of individuals, with any federal or state agency, for any claim or cause of action of any type arising at any time prior to the effective date of this Agreement.**

(Emphasis added.)

8. Between January 23, 2020, and October 17, 2023, AppFolio entered into sixty-eight consulting services agreements that prohibited contractors from voluntarily providing information about AppFolio's business operations to government agencies and required that contractors notify AppFolio of any legally compelled disclosure of such information. The precise text of these provisions varied, but they were all substantially similar to the following example:

Nothing in this Agreement shall be construed to prevent disclosure of Confidential information as may be required by applicable law or regulation, or pursuant to the valid order of a court of competent jurisdiction or an authorized government agency, **provided that the disclosure does not exceed the extent of disclosure required by such law, regulation, or order Contractor agrees to provide written notice of any such order to an authorized officer of AppFolio within 2 business days of receiving such order, but in any event sufficiently in advance of making any disclosure to permit AppFolio to contest the order or seek confidentiality protections, as determined in AppFolio's sole discretion.**

(Emphasis added.)

9. Although the Commission is unaware of any instances in which AppFolio took action to enforce these provisions or in which the affected individuals declined to speak with the Commission staff about potential violations of securities laws, these provisions created impediments to participation in the Commission's whistleblower program by requiring individuals to forego their right to voluntarily provide information to the Commission staff or the financial award they might receive for doing so.

10. Through the conduct described above, AppFolio violated Exchange Act Rule 21F-17(a), which prohibits any person from taking any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation.

Remedial Actions and Cooperation

11. After being contacted by the Commission staff in connection with this matter, AppFolio revised its internal agreement templates, adding language affirmatively advising employees and contractors that they are not prohibited from disclosing information to any government agency or collecting any related incentive awards. AppFolio also used reasonable efforts to notify the affected individuals that their agreements do not in any way limit their ability to contact the Commission staff or to obtain an award in connection with information they provide.

12. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by AppFolio and cooperation afforded to the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in AppFolio's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, AppFolio cease and desist from committing or causing any violations and any future violations of Exchange Act Rule 21F-17(a).

B. AppFolio shall, within ten days of the entry of this Order, pay a civil money penalty in the amount of \$692,250 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying AppFolio as a respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Nicholas P. Heinke, Associate Regional Director, Division of Enforcement, United States Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within thirty days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary