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U.S. DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

ASHLEY GJOVIK, *an individual*,
Complainant,
v.
APPLE INC, *a corporation*,
Respondent Employer.

OALJ Case No. TBD
Filed: January 7 2024

ALJ: To Be Assigned

DWPP Case No. 9-3290-22-051
Filed: August 31 2021
Determination: December 8 2023

**CERCLA 42 U.S.C. § 9610 COMPLAINT &
REQUEST FOR DE NOVO ALJ HEARING**

***Objections to Findings & Order Filed
Separately***

***Requested Amendment to add RCRA/SWDA
and Clean Air Act***

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II. SUMMARY

1. Complainant Employee (“Ashley Gjovik”) respectfully requests an Office of Administrative Law Judges (“OALJ”) de novo hearing on the merits of her CERCLA whistleblower retaliation charge, originally filed August 31 2021 with the Directorate of Whistleblower Protection Programs (“DWPP”). Complainant also attaches her objections to the US Department of Labor (“DOL”) OSHA determination which she also submitted to DWPP on December 24 2023 with a Request for Review under § 24.105(b), which was accepted and confirmed. Upon request for review/hearing, the Complainant is not bound by OSHA's prior determinations.¹ As such, Gjovik also requests her original complaints of retaliation be heard under SWDA/RCRA and the CLEAN AIR ACT, as well as CERCLA, due to a late discovery as to part of Respondent’s motive and the statutory basis already being covered by the original complaints.²

2. In this case, between September 2020 and current day, Gjovik reported suspected violations of environmental laws by Apple and participated in proceedings/actions related to suspected violations of environmental laws by Apple. These activities included Gjovik filing formal and informal complaints to US EPA, state EPA, state Department of Environmental Health, California Air Resource Board, city Fire Department/Haz Mat, and other agencies. These activities included Gjovik’s participation in government inquires and investigations into Gjovik’s complaints with US EPA CERCLA site management, US EPA RCRA Enforcement and Compliance, California Air Resource Board, California DTSC, California Water Resources Board, and others.

3. Gjovik’s activities resulted in government ordered corrective actions, including agency orders for Apple to resolve issues with CERCLA institutional controls impacting both indoor and outdoor air at Gjovik’s office; oversight of Apple’s CERCLA vapor intrusion and outdoor air testing at Gjovik’s office; order to create formal operations and maintenance plans for CERCLA oversight of Gjovik's office; announced and unannounced onsite inspections under CERCLA and RCRA at Gjovik’s office and where Apple severely injured Gjovik in 2020;

¹ *Goodman v. Decisive Analytics Corp.*, 2006-SOX-11 (ALJ Jan. 10, 2006).

² Clean Air Act (CAA) – 42 U.S.C. § 7622; Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) – 42 U.S.C. § 9610; Solid Waste Disposal Act (SWDA)/Resource Conservation and Recovery Act (RCRA) – 42 U.S.C. § 6971; 29 CFR Part 24.

agency reports of inspection findings for both sites, and other outputs – and with much of the RCRA/CAA activity still underway/pending.

III. PARTIES & JURISDICTION

4. Gjovik was a full-time employee at Respondent (“Apple Inc”), with her offices located in California, starting in February 23 2015 and through September 10 2021. Gjovik is a U.S. citizen who lived in California from 2015-2022, New York from 2022-2023, and Massachusetts starting in 2023. Apple is a private U.S. corporation subject to the jurisdiction of 42 U.S. Code §§ 6971, 7622, and 9610(a) and 29 C.F.R. Part 24.³ This Court has jurisdiction over this matter under the above statutes, and the Code of Federal Regulations 29 C.F.R. Part 24.⁴ The Hearing is to be conducted de novo, on the record.⁵

5. Gjovik filed a complaint to the US Department of Labor DWPP on August 29 2021, which was within 30 days of several adverse actions (denying benefits, discipline, etc.), and Gjovik continued to amend the complaint as additional adverse actions occurred (termination, denylisting, etc.). Gjovik’s complaints were filed within 30 days of a discrete adverse action and were filed in writing.⁶ US DOL OSHA dismissed the claims on December 8 2023 (see objections).

6. Upon dismissal from US DOL OSHA, objections to the findings and/or a request for a hearing must be submitted within 30 days of the dismissal.⁷ The day of the triggering event is excluded when computing time, the final day is included, and if the final day lands on a Saturday, Sunday, or holiday, then the period continues to run until a day that is not a weekend or holiday at which point the deadline is at 4:30pm EST (for paper) or midnight EST (for efilng and email).⁸ Here, the OSHA dismissal occurred on December 8 2023. Thirty days from December 8 is January 7 2024, which is a Sunday. Thus, the deadline is end of day Monday January 8 2024. This complaint, objections, and request for hearing were timely filed.⁹

³ US DOL, *Investigator’s Desk Aid to the Whistleblower Protection Provisions of Six Environmental Statutes*, pg3 (“All of the Environmental Statutes apply to private sector employers.”), https://www.whistleblowers.gov/sites/default/files/EPA_Desk_Aid.pdf

⁴ Federal Register, Final Rule, 76 Fed. Reg. 2808 (Jan. 18, 2011).

⁵ 76 FR 2820, Jan. 18, 2011, as amended at 86 FR 1782, Jan. 11, 2021

⁶ 29 C.F.R. Part 24; 29 C.F.R. §24.3(c); *In the Matter of: Michael C. Gross, v Radian International, & Environmental Dimensions, Inc., & Stone & Webster*, Case No. 1999-CAA-24, April 18 2001.

⁷ § 24.105(b); § 24.106

⁸ FRCP Rule 6(a)(4)(A); § 18.32 Computing and extending time

⁹ 76 FR 2820, Jan. 18, 2011, as amended at 86 FR 1782, Jan. 11, 2021.

1 7. This complaint, objections, and request for a hearing has been served on the
2 Respondent as of today, January 8 2024, in compliance with 29 C.F.R. § 18.30(a). See attached
3 certificate of service for details of service under 18.30(iii) via regular mail to service agent, and
4 also via email to company representatives.¹⁰

5 8. While Apple was represented by the law firm “Orrick” for the DWPP OSHA
6 investigation, the prior counsel has communicated they are not retained for this appeal and
7 instructed Complainant to serve the Respondent directly. Because the DWPP
8 Objections/Request for Review filed December 24 2023 was noticed to Apple’s attorneys who
9 now say they are not assigned, paper and email service today also included a copy of the
10 Objections/Request for Review.

11 9. Key witnesses are located in numerous regions including Boston/Cambridge
12 Massachusetts, multiple regions of California, Texas, state of Washington, and foreign countries
13 including France and Italy. The Complainant requests the case be assigned to the Boston office
14 due to her residence in Boston and the varied locations of the witnesses. If the case is assigned to
15 a California office, Complainant requests virtual hearings as she can not travel to California due
16 to cost, her current job, and security concerns about Apple’s Global Security team. Further,
17 Apple has a significant presence in Greater Boston, including at least three large corporate
18 offices (Boston, Cambridge, Waltham) and two retail stores (Boston, Cambridge). If Apple is to
19 retain new attorneys for this case, they can hire attorneys located in Boston, or use their
20 corporate resources in Boston.

21 **IV. CONFLICT OF LAWS & PENDENCY OF OTHER ACTIONS**

22 10. In addition to the US DOL DWPP Request for Review, Gjovik also has four
23 pending NLRB charges, and two pending NLRB cases. Gjovik had a California Department of
24 Labor DIR Retaliation case; however she removed those claims to her civil lawsuit. Gjovik’s
25 civil lawsuit was filed September 7 2023, just two days prior to her statute of limitations for
26 several claims. The case is *Ashley Gjovik v Apple Inc* in the US District Court of Northern
27 California, San Francisco Division. This civil case also includes Gjovik’s “kicked-out”
28 SARBANES-OXLEY ACT whistleblower retaliation charge, now combined with a Dodd-Frank

¹⁰ § 18.30 Service and filing.

retaliation charge as well.¹¹ The civil case also includes Gjovik’s “kicked-out” California Department of Labor charges.¹²

11. Based on average schedules, its likely the OALJ hearing will finish before Gjovik has a hearing on any other charge. If Gjovik prevails in the OALJ hearing, she plans to claim res judicata issue preclusion on related determinations that were fully litigated and the burden of proof is equivalent or less.¹³

V. LEGAL AUTHORITY

12. Apple, Gjovik’s employer, did discharge or otherwise retaliate against Gjovik with respect to Gjovik’s compensation, terms, conditions, or privileges of employment because Gjovik, or any person acting pursuant to Gjovik’s request, commenced/caused to be commenced/is about to commence a proceeding under CERCLA, RCRA, and Clean Air Act for the administration or enforcement of requirements under each statute; and testified/is about to testify in proceedings; and assisted/participated/is about to assist or participate in a proceeding and other actions to carry out the purposes of the CERCLA, RCRA, and Clean Air Act statutes. Because of Gjovik’s actions noted, Apple did intimidate, threaten, restrain, coerce, blacklist, discharge, discipline, and in other manners retaliate against Gjovik.¹⁴

13. From September 2020 through September 2021, prior to Gjovik’s termination, Gjovik engaged in protected activity related to Superfund site regulatory compliance; treatment/storage/disposal of hazardous waste at an active RCRA site; and Clean Air Act air emissions, hazardous air pollutants, and standards for control technologies.¹⁵ Gjovik had a reasonable belief misconduct occurred and that there was a threat to the environment and to the public. Gjovik’s activities were “*grounded in conditions constituting reasonably perceived violations of environmental statutes.*”¹⁶

¹¹ *Ashley Gjovik v Apple Inc*, Case no. 3:23-cv-04597-EMC, US District Court, Northern District of California, San Francisco Division (2023-).

¹² *Ashley Gjovik v Apple Inc*, Case no. RCI-CM-842830, California Department of Labor DIR Retaliation.

¹³ *In Seetharaman v. Stone & Webster, Inc.*, No. 05-cv-11105 (D.Mass. May 11, 2009) (No. 06-024, ALJ No. 2003-CAA-4). (Affirmed by First Circuit); *Ewald v. Commonwealth of Virginia*, 89-SDW-1 (Sec’y Apr. 20, 1995).

¹⁴ Part 24 102

¹⁵ US DOL, *Investigator’s Desk Aid to the Whistleblower Protection Provisions of Six Environmental Statutes*, supra at page 5.

¹⁶ See *Johnson v. Oak Ridge Operations Office*, ARB No. 97-057 (ARB Sept. 30, 1999), slip op. at 8-9; *Crosby v. Hughes Aircraft Co.*, ALJ NO. 85-TSC-2 (Sec’y August 17, 1993, slip op. at 26, aff’d sub nom.

1 **A. CERCLA**

2 14. The COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND
3 LIABILITY ACT (CERCLA) focuses on the cleanup of contamination resulting from the past
4 release of hazardous substances. Section 105(a) of CERCLA requires the President to develop a
5 National Priorities List (NPL) of the most hazardous sites in the United States to prioritize
6 response actions.¹⁷The EPA maintains the NPL of sites contaminated with hazardous waste that
7 are of highest priority for investigation and clean-up due to the presence of contaminants highly
8 toxic to human health and the environment.¹⁸The Superfund Authorization and Reorganization
9 Act (“SARA”) expanded CERCLA to include the Emergency Planning and Community Right-
10 to-Know Act (“EPCRA”).¹⁹

11 15. CERCLA also provides for the clean-up of accidents, spills, and other emergency
12 releases of hazardous substances.²⁰ CERCLA focuses on “abandoned chemical waste sites that
13 slowly pollute communities” and EPCRA focuses on “chemical hazards and emergencies
14 stemming from” RCRA-governed “current sources of pollution that are allowed to legally
15 pollute nearby communities.”²¹ CERCLA regulated ‘reportable quantity’ substances include:
16 arsine, chlorine, phosphine, trichloroethylene, toluene, ethylbenzene, vinyl chloride, xylene, 1,2-
17 dichloroethylene, 1,1,1-trichloroethane, 1,2-dichloroethane. The List of Extremely Hazardous
18 Substances includes arsine, phosphine, chlorine. SARA Title III, Section 313(d)(2)(B) includes
19 benzene, phosphine, N-Methyl-2-pyrrolidone (NMP), toluene, chlorine, vinyl chloride.²²

20 16. Under to 40 CFR 302.6, owners/operators must immediately notify the National
21 Response Center as soon as they have knowledge of a CERCLA hazardous substance release
22 from a facility in a quantity that equals or exceeds the reportable quantity. Under 40 CFR 355.33

23 _____
24 *Crosby v. U.S. Dept. of Labor*, 53 F.3d 338 (9th Cir. 1995); *Tyndale v. U.S. Environmental Protection*
25 *Agency*, ALJ Nos. 93-CAA-6, 95-CAA-5 (ARB June 14, 1996), slip op. at 5-6; *Johnson v. Old Dominion*
26 *Security*, ALJ No. 86-CAA-3 (Sec’y May 29, 1991), slip. op. at 15.

27 ¹⁷ Congressional Research Service, *Environmental Laws*, supra.

28 ¹⁸ Ladou and Harrison, *Current Diagnosis & Treatment: Occupational & Environmental Medicine*, 6th
Edition, page 833, (2021).

¹⁹ Ozymy and Jarrell-Ozmy, “Toxic Intent: Environmental Harm, Corporate Crime, and the Criminal
Enforcement of the Federal Environmental Laws in the United States,” “*You Should Have Warned Me:*
The Criminal Enforcement of the U.S. Resource Conservation and Recovery Act and Superfund,” page
102, Environmental Law Institute (2023).

²⁰ US EPA, *Hazardous Substance Designations and Release Notifications*,
<https://www.epa.gov/epcra/hazardous-substance-designations-and-release-notifications>

²¹ *Toxic Intent*, supra at page 102.

²² US EPA, *List of Lists*, https://www.epa.gov/system/files/documents/2022-12/List_of_Lists_Compiled_December%202022.pdf

1 a reportable quantity release of a CERCLA hazardous substance or of an “extremely hazardous
2 substance” a 24-hour period, the requirements of 40 CFR 355 Subpart C–Emergency Release
3 Notification are triggered. Under, 40 CFR 355.40(b) written notice must provide and update the
4 information required in immediate notifications and also include: actions taken to respond and
5 contain the release, any known or anticipated acute or chronic health risks associated with the
6 release, and where appropriate, advice regarding medical attention necessary for exposed
7 individuals.

7 17. Major themes in CERCLA criminal prosecutions include failure to notify
8 government officials of the release of a hazardous substance (30%).²³ Common criminal
9 CERCLA prosecutions include conspiracy (29%), false statements (21%), mail/wire fraud (5%),
10 and obstruction & racketeering (3%).²⁴

11 **B. CLEAN AIR ACT**

12 18. The CLEAN AIR ACT (“CAA”), codified as 42 U.S.C. 7401 et seq., seeks to
13 protect human health and the environment from emissions that pollute ambient air.²⁵ Section 112
14 of the act establishes programs for protecting public health and the environment from exposure
15 to toxic air pollutants.²⁶ Several of the major program areas for CAA Compliance Monitoring
16 include: NESHAP Air Toxics, Prevention of Accidental Releases, and New Source Review.²⁷
17 Owners and operators of sources producing, processing, and storing extremely hazardous
18 substances must identify hazards associated with an accidental release, design and maintain a
19 safe facility, prepare a Risk Management Plan (“RMP”), and minimize consequences of
20 accidental releases that occur.²⁸ The Clean Air Act governs specific chemicals including arsine,
21 phosphine, chlorine, vinyl chloride.²⁹

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23
24 ²³ *Toxic Intent*, supra at page 110.

25 ²⁴ *Toxic Intent*, supra at page 115.

26 ²⁵ Congressional Research Service, *Clean Air Act: A Summary of the Act and Its Major Requirements*,
September 13 2022, RL30853, <https://crsreports.congress.gov/product/pdf/RL/RL30853>

27 ²⁶ *Id.*

28 ²⁷ US EPA, *Air Enforcement*, <https://www.epa.gov/enforcement/air-enforcement>; Clean Air Act (CAA)
Compliance Monitoring, [epa.gov/compliance/clean-air-act-caa-compliance-monitoring](https://www.epa.gov/compliance/clean-air-act-caa-compliance-monitoring)

29 ²⁸ US EPA, *Waste, Chemical, and Cleanup Enforcement*, <https://www.epa.gov/enforcement/waste-chemical-and-cleanup-enforcement>

30 ²⁹ US EPA, *List of Lists*, https://www.epa.gov/system/files/documents/2022-12/List_of_Lists_Compiled_December%202022.pdf

19. Criminal provisions in the CAA center on unpermitted air emissions.³⁰ Major Themes in CAA Criminal Prosecution includes Operational Violations (16%) and False Statements and Reporting (7%).³¹ Operational Violations may include “illegal emissions releases, tampering with emissions equipment or monitoring devices, and other unpermitted releases” as well as “chemical spills, failing to install emissions control equipment, operating with out a permit and/or risk management plan.”³² Common criminal charges in CAA prosecutions include false statements (21%), conspiracy (18%), fraud (8%), and obstruction (2%).³³

C. SWDA/RCRA

20. The SOLID WASTE DISPOSAL ACT (“SWDA”) and RESOURCE CONSERVATION AND RECOVERY ACT (“RCRA”) govern the regulation of solid and hazardous wastes, and corrective actions to address improper waste management practices.³⁴ US EPA enforces requirements under the RCRA regarding the safe handling, treatment, storage and disposal of hazardous wastes. EPA and the states verify RCRA compliance with these requirements through a comprehensive compliance monitoring program which includes inspecting facilities, reviewing records, and taking enforcement action where necessary.³⁵

21. Major Program Areas for Compliance Monitoring of RCRA include hazardous waste generators; owners and operators of hazardous waste treatment, storage and disposal; universal waste; land disposal; hazardous waste manifests; and permitting.³⁶ Examples of RCRA-regulated chemicals include phosphine (P096), trichloroethylene (U228), toluene (U220), vinyl chloride (D043), xylene (U239), 1,1,1-Trichloroethane (U226), 1,2-dichloroethylene (U079), and 1,2-dichloroethane (U077).³⁷

³⁰ Ozymy and Jarrell-Ozymy, “Toxic Intent: Environmental Harm, Corporate Crime, and the Criminal Enforcement of the Federal Environmental Laws in the United States,” *“I Know What You Did With the Asbestos Last Summer: The Criminal Enforcement of the U.S. Clean Air Act,”* page 57, Environmental Law Institute (2023).

³¹ *Toxic Intent*, supra at page 41.

³² *Toxic Intent*, supra at page 45.

³³ *Toxic Intent*, supra at page 53.

³⁴ Congressional Research Service, *Environmental Laws*, supra.

³⁵ US EPA, *Waste, Chemical, and Cleanup Enforcement*, <https://www.epa.gov/enforcement/waste-chemical-and-cleanup-enforcement>

³⁶ US EPA, *Resource Conservation and Recovery Act (RCRA) Compliance Monitoring*, <https://www.epa.gov/compliance/resource-conservation-and-recovery-act-rcra-compliance-monitoring>

³⁷ US EPA, *List of Lists*, https://www.epa.gov/system/files/documents/2022-12/List_of_Lists_Compiled_December%202022.pdf

22. RCRA criminal provisions focus on treatment, storage, and/or disposal of hazardous waste without a permit, or in violation of a permit; transporting waste without a manifest; illegally exporting hazardous waste; making a false statement in reports or documents, or to an investigator; altering, concealing, or destroying records; and putting another person at risk of imminent danger or bodily harm (“knowing endangerment”).³⁸ Major themes in RCRA criminal prosecutions includes cradle-to-grave violations (54%), disposal violations (16%), transport violations (13%), and false statements and reporting (2%).³⁹ Common criminal RCRA charges include conspiracy (16%), false statements (12%), fraud (5%), and obstruction & racketeering (1%).⁴⁰

VI. GJOVIK’S COMPLAINTS

23. Gjovik obtained a law degree in 2022 focused on internal and human rights law. Gjovik took a course on International Environmental Law & Policy, but otherwise has received no training, or any work experience, related to hazardous waste or hazardous materials management and regulatory compliance. Gjovik’s role at Apple was a Senior Engineering Program Manager focused on Software and Hardware Engineering for consumer products.

24. Gjovik’s complaints to the US EPA, California EPA, and other agencies starting in September 2020 and through June 2023, have resulted in a number of concrete outputs. The US EPA inspected Gjovik’s Apple office (825 Stewart Drive, aka “TRW Microwave Superfund”) on August 19 2021 due to Gjovik’s disclosures. On and around August 17 2023, the US EPA inspected the Apple RCRA-registered office next to where Gjovik was severely injured by unlawful chemical emissions into ambient air in 2020, and the inspection was based on Gjovik’s June 2023 complaints and request for investigation, which cited four months of her research and analysis, and included her personal testimony and concrete evidence Gjovik gathered in 2020.⁴¹ The results are still pending.⁴²

³⁸ Ozymy and Jarrell-Ozymy, “Toxic Intent: Environmental Harm, Corporate Crime, and the Criminal Enforcement of the Federal Environmental Laws in the United States,” *“You Should Have Warned Me: The Criminal Enforcement of the U.S. Resource Conservation and Recovery Act and Superfund,”* page 102, Environmental Law Institute (2023).

³⁹ *Toxic Intent*, supra page 106.

⁴⁰ *Toxic Intent*, supra page 114.

⁴¹ US EPA ECHO, 3250 Scott Blvd, <https://echo.epa.gov/detailed-facility-report?fid=110001168254>

⁴² *Id.*

1 25. Gjovik had a reasonable belief there was misconduct and that there was a threat to
2 the environment and the public. Gjovik's complaints were specific enough to permit the
3 Respondent and agency to investigate the conduct.⁴³ Gjovik engaged in CERCLA protected
4 activity with internal complaints to management and agents (EHS, HR, ER, etc.), to coworkers
5 in writing, she threatened to report complaints to government agencies and the media, she
6 threatened to sue Apple, and she did report issues to government agencies and the press.⁴⁴ All of
7 these things were protected.⁴⁵

8 26. Key Apple actors in this case are Ashley Gjovik (Complainant), David Powers
9 (Gjovik's supervisor), Dan West (Gjovik's other supervisor), Yannick Bertolus (Gjovik's VP,
10 West reports to Bertolus), Helen Polkes (Human Resources), Jenna Waibel (Employee
11 Relations), Ekelemchi Okpo (Employee Relations), Tony Lagares (Employee Relations),
12 Michael Steiger (EH&S), Antone Jain (EH&S), Debra Rubenstein (EH&S Lawyer), Elizabeth
13 Schmidt (EHS), Aleks Kagramanov (Workplace Violence), Lisa Jackson (VP of Lobbying; prior
14 US EPA administrator), Ronald Sugar (Apple Board Member, Chair of Audit & Finance
15 Committee, prior CEO of Northrop Grumman), Kate Adams (General Counsel), and Tim Cook
16 (CEO). A number of these people have since terminated their employment with Apple including
17 at least Bertolus, Lagares, and Steiger. Other parties involved include Northrop Grumman;
18 TRW; Irvine Company; Honeywell; AECOM; EKI; and a number of law firms.

19 **A. 825 STEWART DRIVE (CERCLA/NPL SITE)**

20 27. Gjovik's Apple office from 2017 until her termination was located at 825 Stewart
21 Drive in Sunnyvale California, also known as the "TRW Microwave" Superfund site, and part of the
22 US EPA "Triple Site." This section details Gjovik's complaints about the property and building at
23 825 Stewart Drive. These were complaints that Apple knew about, and Apple retaliated against

24 ⁴³ US DOL, *Investigator's Desk Aid to the Whistleblower Protection Provisions of Six Environmental*
25 *Statutes*, supra at page 6.

26 ⁴⁴ *Pogue v. United States Dept. of the Navy*, 87-ERA-21 (Sec'y May 10, 1990); *Nichols v. Bechtel*
27 *Construction, Inc.*, 87-ERA-44 (Sec'y Oct. 26, 1992); *Crosier v. Portland General Electric Co.*, 91-
28 *ERA-2* (Sec'y Jan. 5, 1994); *Harrison v. Stone & Webster Engineering Group*, 93-ERA-44 (Sec'y Aug.
29 22, 1995); *Crosby v. Hughes Aircraft Co.*, 85-TSC-2 (Sec'y Aug. 1, 1993); *Diaz-Robainas v. Florida*
30 *Power & Light Co.*, 92-ERA-10 (Sec'y Jan. 10, 1996); *Conley v. McClellan Air Force Base*, 84-WPC-1
31 (Sec'y Sept. 7, 1993); *Carter v. Electrical District No. 2 of Pinal County*, 92-TSC-11 (Sec'y July 26,
32 1995); *Scott v. Alyeska Pipeline Service Co.*, 92-TSC-2 (Sec'y July 25, 1995), citing *Simon v. Simmons*
33 *Indus.*, 87-TSC-2 (Sec'y Apr. 4, 1994).

⁴⁵ *Hoffman v. Bossert*, 94-CAA-4 (Sec'y Sept. 19, 1995) (Complainant was not rehired because, after his
34 layoff, he went to the newspapers, causing general hysteria about asbestos in school roofing materials).

1 Gjovik because of Gjovik’s complaints. This section then also summarizes actions taken by
2 regulators after Gjovik was fired where it bolsters Gjovik’s claims or documents a basis for
3 Apple to be motivated to retaliate against Gjovik.

4 28. The “Triple Site” is the collective name for three adjacent [Superfund] sites in
5 Sunnyvale that have jointly contributed to a groundwater solvent plume.⁴⁶ The US EPA
6 webpage for Triple Site states that, “a groundwater plume composed of volatile organic
7 compounds (VOCs), including TCE, extends from these [three Superfund] sites more than a
8 mile.”⁴⁷ In addition, the “Offsite Operable Unit” is roughly a one-hundred acre area where
9 shallow groundwater contamination from TRW Microwave, and the other two sites, has
10 migrated to, and which “includes four schools and over 1,000 residences.”⁴⁸ As of 2021,
11 “residences are being sold in the [Triple Site Offsite Unit] and building permits for construction
12 are being issued by the City without notification of site conditions and transmittal of mitigation
13 system [Operations & Management] plans and EPA requirements to existing owners,
14 prospective purchasers, and new buyers.”⁴⁹

15 29. The US EPA “Triple Site” includes three NPL Superfund sites (AMD Site, TRW
16 Microwave Site, Offsite Unit) and one RCRA remedial action site (Signetics).⁵⁰ The sites are
17 “clustered together in Sunnyvale California.”⁵¹ The EPA has been “prioritizing and scheduling
18 site work based on human health risk to vapor intrusion into buildings... the [Offsite Unit] risk
19 to human health and environment... and “a Record of Decision Amendment (RODA) will be
20 initiated based on F[ocused] F[easibility] S[tudies] completed for the AMD, TRW, and Signetics
21 Site and [Offsite Unit].”⁵² The new study was needed because “the surficial aquifer exposure
22 pathway for V[apor] I[ntrusion] is poorly delineated in the OOU” and “vapor intrusion in the
23 OOU was not addressed in the R[ecord] O[f] D[ecision].”⁵³

24 ⁴⁶ US EPA, *Triple Site Site Profile - Background*,
<https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.Cleanup&id=0900265#bkground>

25 ⁴⁷ US EPA, *Triple Site Site Profile – Background*, supra.

26 ⁴⁸ US EPA, *Triple Site Site Profile – Background*, supra; *Offsite Operable Unit, Triple Site, Administrative Settlement Agreement and Order on Consent*, CERCLA Docket Number 2019-05

27 ⁴⁹ US EPA, *Fiscal Year 2021 Site Management Plan*, supra.

28 ⁵⁰ US EPA, August 18 2020, *Fiscal Year 2021 Site Management Plan for the Triple Site*,
ED_006475C_00000790-0001, “2020-08-18 FY21 Triple Site_Site Management Plan.docx”

⁵¹ US EPA, *Fiscal Year 2021 Site Management Plan*, supra.

⁵² US EPA, *Fiscal Year 2021 Site Management Plan*, supra.

⁵³ US EPA, *Fiscal Year 2021 Site Management Plan*, supra.

1 30. One of the sites is the “TRW Microwave” Superfund site (EPA ID
2 CAD009159088) which is a former industrial semiconductor fabrication and manufacturing
3 facility at 825 Stewart Drive.⁵⁴ The primary contaminants in the TRW Microwave groundwater
4 contamination plume are chlorinated volatile organic compounds including trichloroethene
5 (TCE), and its daughter products cis-1,2-dichloroethene and vinyl chloride.⁵⁵ There are 10
6 Contaminants of Concern in total. The Responsible parties for 825 Stewart Drive have been
7 cited numerous times by the city, state, and federal government for violations at the TRW
8 Microwave Superfund site. This includes 1984 & 1989 state orders, a 1991 state and US EPA
9 Record of Decision, a 2014 warning and agency transfer, a 2014-15 Notice of Deficiency, and a
2019 Settlement between the parties and the U.S. EPA.

10 31. The site has numerous hydro-stratigraphic units within four plume zones.⁵⁶ The
11 shallowest zone (Zone A) is only 2.6 feet to 9.4 feet below the ground surface and as of 2021,
12 TCE concentrations were up to 95 µg/L and vinyl chloride up to 27 µg/L.⁵⁷ The second
13 shallowed zone (Zone B1) is 22 feet to 46 feet below ground surface, and as of 2021, had
14 concentrations of TCE up to 1,400 µg/L and vinyl chloride up to 51 µg/L.⁵⁸ Northrop Grumman
15 conducted an initial vapor intrusion evaluation at the TRW Microwave site in 2004, which
16 indicated that TCE concentrations in indoor air present an inhalation risk exceeding acceptable
health and safety levels.⁵⁹

17 32. In 2014, the US EPA and US Army Corp of Engineers warned that “*the risk [at*
18 *825 Stewart Drive] due to vapor intrusion is controlled as long as the building remains*
19 *unoccupied, and the exposure pathway remains incomplete. However, in order for the remedy to*
20 *be protective in the long-term, the ROD will need to be amended to reflect a revised final soil*
21 *and groundwater remedy for the Site since the remedy selected in the [Record of Decision] is no*
22

23 ⁵⁴ AECOM for Northrop Grumman, Development Of The Environmental Sequence Stratigraphy (ESS)
24 Conceptual Site Model For Groundwater At The Former TRW Microwave Site, Sunnyvale, California,
pg3, (December 16 2020), <https://semspub.epa.gov/work/09/100027767.pdf>

25 ⁵⁵ Id at 3.

26 ⁵⁶ AECOM for Northrop Grumman, “*Former TRW Microwave Site Current Site Status and Path*
27 *Forward*,” slide 16, (July 9 2020), <https://semspub.epa.gov/work/09/100023781.pdf>

28 ⁵⁷ US Army Corps of Engineers for the US EPA, Fifth Five-Year Review Report for Advanced Micro
Devices 901/902 And TRW Microwave Superfund Sites, page 3-4, (September 18 2019).

⁵⁸ Id.

⁵⁹ Id at pg4; AECOM for Northrop Grumman, 2021 Annual Groundwater Monitoring Report Former
TRW Microwave Site, 825 Stewart Drive, Sunnyvale, CA, March 17 2022,
<https://semspub.epa.gov/work/09/100027769.pdf>

1 *longer operating.*”⁶⁰ The US EPA determined in 2015 that the conditions at the Triple Site may
2 constitute an imminent and substantial endangerment to the public health or welfare.⁶¹

3 33. In 2016, Oaktree Capital and Hines sold 825 Stewart Drive to CalSTRS via GI
4 Partners while Apple was a tenant. The US EPA transmitted a letter to CalSTRS/GI Partners
5 instructing them about their obligations under CERCLA. The letter stated: “The new Prospective
6 Purchaser and any tenants will cooperate with EPA and Northrop by providing reasonable access
7 to the Property for operations maintenance and monitoring of the indoor air and vapor intrusion
8 control systems, groundwater monitoring, as well as any other current and future remedial
9 activities, monitoring and implementation of institutional controls.”⁶²

10 34. The US EPA letter explained that in order for the new owner to qualify as a
11 Bonafide Prospective Purchaser (BFPP) under CERCLA, they “must take reasonable steps” with
12 respect to stopping continuing releases, preventing threatened future releases, and preventing or
13 limiting human, environmental, or natural resources exposure to earlier releases.” Based on US
14 EPA’s analysis of TRW Microwave site data, the US EPA provided eight steps which “*should*
15 *be taken by the Prospective Purchaser during its ownership with respect to the contamination at*
16 *the Property.*”⁶³ These included,

- 15 - “2. Cooperation by providing reasonable access to the Property to EPA... for operation,
16 maintenance and monitoring of the vapor intrusion mitigation system,”
- 17 - “5. A prohibition on building construction, renovation or other modification activities
18 that may affect the integrity of the concrete slab or affect the integrity of the sub-slab
19 vapor mitigation system, without the prior approval of EPA,”
- 20 - “6. Where prior approval is required in Step #5 above, submit to EPA for review and
21 approval a plan, and then implement such plan, to mitigate any potential preferential
22 pathways for subsurface vapors to enter into the building as a result of such afore-
23 referenced activities, and make any repairs necessary to ensure continued effective
24 operation of the sub-slab vapor mitigation system,”

24 ⁶⁰ US Army Corps of Engineers for the US EPA, Fifth Five-Year Review Report for Advanced Micro
25 Devices 901/902 And TRW Microwave Superfund Sites, page15, (September 18 2019).

25 ⁶¹ *In The Matter of: Offsite Operable Unit, Triple Site, Sunnyvale, California*, CERCLA Docket No 2019-
26 05, Administrative Settlement Agreement & Order on Consent for removal Site Evaluation and Removal
27 Action, Page 7 (2019).

26 ⁶² US EPA to GI DC Sunnyvale LLC, “Status of Property and Prospective Purchaser's Reasonable Steps,
27 825 Stewart Drive, Sunnyvale, Santa Clara County, California, TRW Microwave Site Operable Unit of
28 the "Triple Site", SEMS-RM DOCID #1160217 (May 18 2016), pg2,
<https://semspub.epa.gov/work/09/1160217.pdf>

⁶³ US EPA to GI DC Sunnyvale LLC, “Status of Property and Prospective Purchaser's Reasonable Steps,”
supra, pg3

1 - “8. Cooperation with implementation of institutional controls at the Property to the extent
2 required by EPA.”⁶⁴

These obligations would also apply to Apple as the operator.

3 35. As of 2019, despite decades of clean-up efforts, the TCE concentrations in the
4 shallow A-Zone of the TRW Microwave plume were “*either stable or show no trend*” and
5 pollution levels “*remain elevated above the [Record of Decision] cleanup levels.*”⁶⁵ Northrop
6 Grumman’s qualification of the site continued to explain: “*The Triple Site Plume is a*
7 *commingled plume, and multiple source areas have been identified. The former TRW Site is*
8 *one.*”⁶⁶ Northrop Grumman warned that “*due to inherent geologic complexities, restoration [of*
9 *the Triple Site/TRW Microwave plume] within the next 50-100 years is likely not achievable.*”⁶⁷

10 36. The contaminant of concern at the Triple Site as a problem. Trichloroethylene is
11 heavier than air and may cause asphyxiation in poorly ventilated or enclosed spaces.⁶⁸
12 Trichloroethylene can produce CNS effects including headache, dizziness, lack of coordination,
13 stupor, and coma. Respiratory depression or cardiac dysrhythmia from high-level exposures can
14 result in death. Other effects of acute exposure include hypotension, nausea, vomiting, and
15 diarrhea.⁶⁹ There is no antidote for trichloroethylene poisoning.⁷⁰ There is strong evidence that
16 trichloroethylene can cause kidney cancer in people and some evidence for trichloroethylene-
17 induced liver cancer and malignant lymphoma.⁷¹ The Department of Health and Human Services
18 (DHHS) considers trichloroethylene to be a known human carcinogen.⁷² The International
19 Agency for Research on Cancer (IARC) classified trichloroethylene as carcinogenic to humans.
20 The EPA has characterized trichloroethylene as carcinogenic to humans by all routes of
21 exposure.⁷³

22 37. Throughout the ordeal, Gjovik was concerned not only about her safety and her
23 co-worker’s safety, but also: visitors to the office; the people living, studying, & working

24 ⁶⁴ Id at pg3-4.

25 ⁶⁵ US Army Corps of Engineers for the US EPA, Fifth Five-Year Review Report for Advanced Micro
26 Devices 901/902 And TRW Microwave Superfund Sites, page67, (September 18 2019).

27 ⁶⁶ Id.

28 ⁶⁷ AECOM for Northrop Grumman, “*Former TRW Microwave Site Current Site Status and Path*
29 *Forward,*” slide 24, (July 9 2020), <https://semspub.epa.gov/work/09/100023781.pdf>

30 ⁶⁸ CDC, Medical Management Guidelines for Trichloroethylene,
31 <https://www.atsdr.cdc.gov/MHMI/mmg19.pdf>

32 ⁶⁹ Id.

33 ⁷⁰ Id.

34 ⁷¹ CDC, Trichloroethylene ToxFAQs 2020, <https://www.atsdr.cdc.gov/toxfaqs/tfacts19.pdf>

35 ⁷² Id.

36 ⁷³ Id.

1 elsewhere on the Triple Site; and anyone who may visit or pass through. Gjovik's concerns
2 included that if there was insufficient oversight of the TRW Microwave site (that cracks in the
3 floor were not noticed for years and no testing for six years or more) that changes in site
4 conditions could affect the larger Triple Site and those on/near it. Gjovik's concerns included
5 protecting human health and the environment & by involving the community in the CERCLA
6 process.

7 **i. NPL: Clean-Up, Migration, Vaporization**

8 38. In 2019, the US EPA and US Army Corp of Engineers warned that TCE
9 concentrations in the outdoor air of the Triple Site have been increasing and exceeding health
10 and safety thresholds.⁷⁴ In 2018 and 2019, TCE levels of up to 3.6 µg/m³ were identified in the
11 outdoor air.⁷⁵ (Note: 3 µg/m of TCE in indoor air from vapor intrusion is unacceptable for
12 commercial buildings). In 2020, Northrop Grumman described the Triple Site and TRW
Microwave site to the US EPA saying,

13 “The Triple Site plume in the Santa Clara Valley represents a classic example of
14 a ‘*complex contaminated groundwater*’ site” Despite more than three
15 decades of intense characterization and remediation efforts, including nearly
16 four decades of groundwater pump and treat system operation from multiple
17 locations across the plume since 1982, significant uncertainties remain regarding
subsurface fluid flow, plume containment, and restoration timeframes. Remedy
performance has lagged far behind expectations.”⁷⁶

18 39. As of the January 8 2021 “FYR Issues and Recommendations Report” for TRW
19 Microwave, the US EPA noted as an issue: “outdoor air TCE levels have shown a generally
20 upward trend over time since regular sampling commenced in January 2015.” As a
21 recommendation it noted: “Investigate contributions to outdoor air TCE levels from fugitive
22 emissions from the groundwater treatment system and emissions from the vapor intrusion
23 mitigation systems.” There was no status noted but an ETA was set for September 1 2022.

24 40. On April 11 2021, Gjovik emailed Steiger and Waibel additional questions,
25 including “I made a map of where I had the really bad fainting spell in September of 2019. I
26 brought this up again with our Sr Director, who remembered me telling him about it when it

27 ⁷⁴ US Army Corps of Engineers for the US EPA, Fifth Five-Year Review Report for Advanced Micro
28 Devices 901/902 And TRW Microwave Superfund Sites, page27, (September 18 2019).

⁷⁵ Id.

⁷⁶ US EPA, Development of The Environmental Sequence Stratigraphy, supra at pg16.

1 happened. This screwed up my diagnosis of what happened last year because the only time I had
2 ever had severe fainting spells like I did in my hazardous waste apartment (with suspected VI)
3 — was that time in September at SD01. It first started in Mike Ertell’s office (marked) and then
4 continued for a couple hours at my desk (marked).

- 5 a. You can see these are almost the exact locations of SS-7, SS-2, IA-7, AI-12, and
6 IA-2 These slub sla[b]s have up to 2100 ug/m3 of TCE, 290ug/m3 of PCE, &
7 6.6-26 of Chloroform.
- 8 b. The indoor air there has had up to 7.3 ug/me TCE, 12ug/m3 of ethylbenzene, 1100
9 of toluene, and 0.53 of vinyl chloride.
- 10 c. Not sure if anyone else has ever had incidents like that but probably worth noting
11 our organization is only 10% women — so if women are the canaries in the coal
12 mine due to our hormones & fat...
- 13 d. For the 2021 testing would you be willing to please test IA-7, IA2, &/or AI-12
14 again please? (Essentially my does and Mike Ertell’s office) And SS-2 & SS-7 if
15 you’re doing sub slats again too.

16 41. On April 11 2021, Gjovik emailed Steiger and Waibel additional questions,
17 including “per the FYR plan it looks like cDCE (as well as TCE) as found in the soil under the
18 building above remediation criteria. Was there further clean up on it?”

19 42. On April 11 2021, Gjovik emailed Steiger and Waibel additional questions,
20 including “I saw that in 2015 they found Ethylbenzene in exceedance of EPA industrial limits in
21 the indoor air near my desk, but that Ethylbenzene is not a COC. Was there any talk of making it
22 a COC? Will it be one of the chemicals you test for this year — and if not, can it be? Did anyone
23 confirm those levels actually went down after the Dec testing? The last data point we have
24 shows Ethylbenzene present on site above EPA industrial limits in our workspace.

25 43. On April 11 2021, Gjovik emailed Steiger and Waibel additional questions,
26 including “I also see what looks like exceeding levels of Toluene in the lab reports next to my
27 desk but didn’t see it mentioned in the reports — can you provide insight? Also same questions
28 as Ethylbenzene above.” On April 11 2021, Gjovik emailed Steiger and Waibel additional
questions, including “any idea why the 2019 FYR didn’t mentioned the above industrial limits of
Toluene or Ethylbenzene in the indoor air?”

44. On April 21 2021 Gjovik emailed Steiger, Jain, and Waibel: “pg 11 talks about
how TCE, PCE, & Chloroform amounts “noticeably increased” in Dec after June and said
“perhaps related to transit fluctuations in barometric pressure.” Will you be doing SSV testing

1 this year as well? Or only indoor air? Seems like the enormous groundwater plumes under the
2 building could be moving chemicals around?”

3 45. On April 30 2021, Gjovik emailed the US EPA (Perez-Sullivan), “The Dec
4 results came back with high levels of Ethylbenzene and Toluene that were suspected to be
5 resulted to the construction but does not appear to have been verified by an additional test later.
6 It also appears that the building was vacant until Apple moved my team in there in 2015-ish...
7 Are Ethylbenzene and Toluene CoCs for the great Triple Site plume — could they be
8 migrating?”

9 46. On April 30, Gjovik emailed the California Department of Public Health
10 Environmental Investigations team again, Dr. Prudhomme: “This actually blew up a bit this
11 month. I started asking questions to our Env Health & Safety team and was very dissatisfied
12 with their answers. The testing they did in 2015 appears to be 10hr (not 24-48hr) and they didn’t
13 even fully turn the HVAC off. And Toluene and Ethylbenzene did come back high but was
14 written off because not “contaminants of concern.” Then they didn’t do any testing again. And
15 before 2015, the building was vacant for a very long time. They moved my team in 2015-2016-
16 ish.”

17 47. On May 17 2021, during a meeting with Gjovik, Steiger, and Waibel, Apple said:
18 “As for the Ethylbenzene & Toluene, Michael said those are not attributable to vapor intrusion in
19 SD01 because they are not contaminants of concern. And that there was no evidence they
20 exceeded OSHA PEL limits in the building. If I have any non-VI chemical questions, can
21 arrange for a workplace evaluation by Austin.”

22 48. On July 7 2021, Gjovik emailed US EPA (Perz-Sullivan) and wrote: “I see
23 ethylbenzene and toluene noted as related chemicals for TRW in earlier EPA reports (copy
24 inline). Did you mean to say they’re not “contaminants of concern?” Does it change your
25 analysis knowing they have been known to be part of the historical contamination?”⁷⁷

26 49. Around July 12 2021, US EPA emailed amongst themselves considering Gjovik’s
27 questions to Perez-Sullivan. On July 20 2021, US EPA (Perz-Sullivan) emailed Gjovik and
28 wrote: “Your inline screenshot below is from the 1991 Record of Decision for the site, which
shows the maximum detected soil concentrations for ethylbenzene at 2 milligram per kilogram
(mg/kg) and for toluene at 3 mg/kg. The concentration values are from 30 years ago and during

⁷⁷ US EPA email: July 12 2021, “no subject”

1 that time the contaminated soil was removed. Therefore, these chemicals are not documented in
2 the Record of Decision as chemicals of concern.”

3 50. Toluene and Ethylbenzene have been known to be onsite, in the plume, and are in
4 upgradient plumes flowing under the building. Both chemicals have also been found in the sub-
5 slab air testing. “Historically, toluene (and benzene, ethylbenzene, and xylenes) has been
6 detected routinely in samples from former Site source area Educator well.”⁷⁸ In addition, in 2008,
7 toluene was found in a new area of the plume at 825 Stewart Drive up to 24,000 µg/L. The
8 contamination was root caused to a new disposal/release occurring in 2008. “It appears that the
9 five-gallon bucket labeled as containing bituminous cement may be a potential source of toluene
10 impacts to groundwater. It appears that some of the contents of the bucket had discharged to the
11 ground surface, likely through rainwater falling within the bucket and then overflowing out of
12 the bucket, carrying dissolved VOCs.”⁷⁹

12 **ii. NPL: Record of Decision**

13 51. As of August 2020, the US EPA’s Site Management Plan for the Triple Site
14 (including TRW Microwave site) noted that at TRW Microwave “Human Exposures Under
15 Control: No” and provided an ETA for when HEUC (“Human Exposures Under Control”) as
16 December 30 2021.⁸⁰

17 52. As of January 4 2021, the US EPA “FYR Issues and Recommendations Report”
18 (v1.06) for the TRW Microwave site noted as an issue “The remedy selected for the TRW Site is
19 no longer being operated.” The report added as a recommendation: “Select a revised remedy
20 which incorporates long-term stewardship measures for the current vapor intrusion mitigation
21 measures in place, as well as addressed potential vapor intrusion in the event of future land use
22 changes.” The status was noted as “More time needed to select a revised remedy” with an ETA
23 for September 1 2025. In March 2021, CalEPA DTSC had told Gjovik, related to her apartment,
24 that “it’s a rare occurrence that a remedy is no longer protective and that a site has to be
25 reevaluated.”

26
27 ⁷⁸ CDM, *Notification of the Detection of Toluene at Cheese Whey Injection Wells Former TRW
Microwave Facility 825 Stewart Drive, Sunnyvale, California*, pg3, (19 May 2008).

28 ⁷⁹ Id at Page 5.

⁸⁰ US EPA, August 18 2020, Fiscal Year 2021 Site Management Plan for the Triple Site,
ED_006475C_00000790-0001, “2020-08-18 FY21 Triple Site_Site Management Plan.docx”

1 53. On April 2 2021, Gjovik emailed Steiger and Waibel: “The EPA Superfund pages
2 says the site does not current have “Human Exposure Under Control.” Why is that? Are you
3 worried about the employees?” “The EPA site says the site is not ready for re-use or re-
4 development. Does that mean it’s not ready to become residential — or even commercial and
5 other industrial use is prohibited?” “Did the two 2019 legal settlements relate to the TRW
6 site/plume as well? Or only Signetics?”

7 54. At the April 2 2021 meeting with Gjovik, Steiger, and Waibel – Steiger agreed to
8 get Gjovik a copy of 2019 Five Year Review and share, figure out why it wasn’t posted publicly
9 – and to look into details why EPA website currently says human exposure is not under control.
10 Steiger replied April 9 2021, “It appears EPA doesn’t have the current information listed.”
11 [about whether human exposure was under control.”

12 55. On April 10 2021, the US EPA emailed amongst itself about Triple Site and the
13 TRW Microwave site manager wrote: “I’d add for Triple Site ... the need for a [Focused
14 Feasibility Study] and [Record of Decision Amendment] Development (or ESD) is because the
15 State significantly changed or ‘optimized’ the ROD remedy. I suspect there are other sites where
16 the State approved the ROD remedy changes through Orders or comments, but not through the
17 CERCLA process.”⁸¹

18 56. On April 11 2021, Gjovik emailed Steiger and Waibel additional questions,
19 including “page 16 of the 2019 FYR says the remedy for our building is no longer in operation
20 — can you explain what this means please?”

21 57. On June 7 2021, US EPA (Perez-Sullivan) wrote to Gjovik: “EPA believes the
22 remedy in place at the TRW Microwave Site remains protective. EPA will continue to evaluate
23 the protectiveness of the remains protective. EPA will continue to evaluate the protectiveness of
24 the remedy if conditions at the Site change. EPA will also continue to evaluate the protectiveness
25 at the Site during the mandatory Five-Year Review, which was last completed for the TRW
26 Microwave and the Triple Site in late 2019.”

27 58. On July 7 2021, Gjovik emailed US EPA (Perez-Sullivan) and said: “not sure if
28 you’re aware, but apparently TRW Microwave building has NEVER had an EIR. It was made a
Superfund after it was already constructed (that’s where the leaking/dumping happened). Then
they did a negative declaration for the expansion and that was it. I didn’t see anything for

⁸¹ US EPA, Schulman to Poalinelli, Fy, and others; April 10 2021; Subj: *RE: south bay sites*

1 Apple's remodel either. I P[ublic] R[ecord Requeste]d Sunnyvale city records and they sent me
2 what they had. Quite limited." [Gjovik would forward these emails to Apple]

3 59. On July 12 2021, US EPA met and emailed amongst themselves seeking "*legal*
4 *advice for the site, the RODA, and the enforcement aspects*" of the TRW Microwave site.⁸² On
5 July 26 2021, US EPA emailed amongst themselves with Shulman asking Reynolds "*We have*
6 *legal questions re: TRW meeting, can you join?*"⁸³

7 60. On July 28 2021 EPA emailed EPA drafting an email response to Gjovik's most
8 recent emails and noted "I've attached the latest note from Ashley in which she stated is looking
9 forward to changes that will be made of record. Not sure if she means a ROD amendment or if
10 I'm reading too deeply into this."

11 61. On December 14 2021, US EPA emailed amongst themselves about a quote from
12 the 2014 Five Year Report saying "risk due to vapor intrusion for the current commercial land
13 use has been addressed. However, in order for the remedy to be protective in the long-term, a
14 revised soil and groundwater remedy for the TRW Site should be selected. as the remedy
15 selected as the ROD is no longer operating. The revised remedy should also address vapor
16 intrusion assessment and response procedures to ensure the long-term stewardship of the vapor
17 intrusion mitigation measures currently in place, as well as potential vapor intrusion in the event
18 of future land use changes, as vapor intrusion was not addressed in the 1991 ROD."

19 62. On February 3 2022, US EPA emailed amongst themselves: "Do you have time
20 this week to finalize a letter regarding the TRW Microwave requesting the PRP respond to
21 December comments. I also included draft comments that the PRP(s) conduct indoor air
22 sampling. Attached is the email thread we need to respond to.... The project files on the topic
23 are here, include the initial draft that Rebekah reviewed (Folder titled: "Apple 825 Stewart 2021-
24 ")

25 **iii. Institutional Control: Indoor Air Testing**

26 63. In May 2015, vapor intrusion testing at 825 Stewart Drive showed indoor air
27 pollution of Trichloroethylene (TCE), 1,2-Dichloroethene (1,2-DCE), Toluene, Chloroform,
28 Methylene Chloride, and Ethylbenzene. The testing also showed outdoor air contamination on

⁸² US EPA email: July 12 2021, "FW: Questions about TRW Microwave"

⁸³ US EPA, Schulman to Reynolds; July 26 2021; No Subject line

1 the roof, possibly coming through the sub-slab vents. The rooftop air pollution included TCE,
2 1,2-DCE, Chloroform, and Xylenes.⁸⁴

3 64. Apple (not Northrop Grumman) managed, signed off on, and submitted the report
4 to the US EPA for the December 2015 vapor intrusion testing at 825 Stewart Drive. The vapor
5 intrusion testing report cover page says “*prepared for Apple Inc.*” by AECOM.⁸⁵ Apple’s
6 December 2015 vapor intrusion testing results showed an increase in sub-slab and indoor air
7 pollution compared to the May 2015 results.⁸⁶ For instance, while the highest indoor air TCE
8 reading in May 2015 was 0.58 µg/m³, the highest indoor air TCE reading in December 2015 was
9 1.2 µg/m³ (double). Another example, in the May 2015 test results, no indoor air results
10 exceeded US EPA or California DTSC HERO limits; the December 2015 results, however,
11 included results for Ethylbenzene which exceeded both US EPA and DTSC HERO limits.⁸⁷
12 Even Apple’s report noted a “noticeable increase” of TCE, PCE, and chloroform in the sub-slab
13 venting system.⁸⁸

14 65. Apple submitted the test result report to US EPA in February 2016. The report
15 noted a number of issues that occurred during testing including inability to turn the HVAC off in
16 one area of the building, unexpected construction work during the testing, moving an indoor air
17 testing location to a different area not in a “secure” lockdown (implying Apple already had
18 employees working in the building), and testing unplanned sub-slab monitoring ports (which are
19 directly connected to the vapor intrusion ventilation system) because the two indoor planned that
20 were planned to be tested were “compromised” (SS-7) and “could not be located” (SS-11).⁸⁹

21 66. Both rounds of testing in 2015 were for only ten hours. Indoor air sampling for
22 vapor intrusion contaminants is usually conducted for a duration of 24 hours, and eight hours is
23 the bare minimum and requires proper justification.⁹⁰ On March 2 2016, the US EPA “approved”
24 Apple’s December 2015 test results, however, the US EPA actually re-approved the May 2015
25 results and did not respond to the December 2015 testing. In 2016, US EPA (Melanie Morash)
26 wrote about the December 2015 results in her approval letter: “*of the five indoor air samples*

27 ⁸⁴ US EPA, TRW Microwave, Site Documents, Vapor Intrusion,
28 <https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.scs&id=0901181&doc=Y&colid=40417®ion=09&type=SC>

29 ⁸⁵ AECOM for Apple, Vapor Intrusion Evaluation Report, Former TRW Microwave Site, *supra*.

30 ⁸⁶ US EPA, *December 2015 VI Evaluation Report*, <https://semspub.epa.gov/work/09/1158560.pdf>

31 ⁸⁷ *Id* at pages 26-25.

32 ⁸⁸ AECOM for Apple, Vapor Intrusion Evaluation Report, Former TRW Microwave Site, *supra* at pg11.

33 ⁸⁹ *Id* at pg4-5.

34 ⁹⁰ US EPA, Engineering Issue Indoor Air Vapor Intrusion Mitigation Approaches, Pg38 (2008),

1 collected, the highest level of trichloroethene (TCE) detected was 0.58 micrograms per cubic
2 meter (ug/m³). ”⁹¹ [However, this was the May 2015 data].

3 67. Apple’s February 2016 report stated that “*if building conditions change in the*
4 *future where the sub-slab foundation is affected and/or other VI conduits are created, then an*
5 *additional monitoring event will be performed utilizing the same sampling methodology.*”⁹²
6 Apple’s methodology for the 2015 testing included using 6-liter Summa canisters configured for
7 a ten hour sample and TO-15 panel, and collecting multiple indoor air samples, multiple sub-
8 slab port samples, and rooftop outdoor air samples.⁹³ [Gjovik and Apple would fight about this
9 later, with Apple insisting on using inferior week-long passive sorbent-based testing in 2021,
10 after notifying Gjovik that the slab was compromised, and Gjovik insisting Apple align with the
11 prior workplan and also notify US EPA, but Apple refusing. Later, the US EPA would order
12 Apple to essentially do what Gjovik said.]

13 68. On April 2 2021, Gjovik emailed Steiger and Waibel: “I see additional vapor
14 intrusion testing was conducted in 2015 and it was determined the VI issues were mitigated.
15 What type of testing was done (summa?)? What duration (24, 48 etc.)? How many locations in
16 the building? What were the results?” “How often is VI testing done in the building? Has it been
17 done since 2015? If so, where are the results?” “Where can I find the 2019 Five Year Report? I
18 see it was completed Sept 2019 — but it does not appear to be posted on the EPA website. Can I
19 request it from the EPA project manager?”

20 69. On April 2 2021, Gjovik met with Steiger and Waibel, and Gjovik’s meeting
21 notes included statements from Apple saying: “Late 2014 / Early 2015 - vapor intrusion
22 mitigation system installed (passive system) + sealed the floor. Late Dec 2015 testing done —
23 and results were acceptable. (Summa, timing tbd - 8-10 of them maybe) EPA and Apple
24 confirmed no VI in 2015, so no historical issues to disclosed to anyone in the building —
25 because assumed to not be an issue anymore. No indoor VI testing since 2015. 2021 will be first
26 round. In 2021, doing more state of art testing. Passive samplers. Absorbent passive samplers
27 over a week. Never heard EPA or landlord were doing more testing.” Steiger agreed to share
28 info on new passive sample testing technology planned for 2021 and to share results of current
29 2021 testing.

30 ⁹¹ US EPA, TRW Microwave, *EPA Approves Feb 2016 VI report*,
31 <https://semspub.epa.gov/work/09/1158558.pdf>

32 ⁹² AECOM for Apple, Vapor Intrusion Evaluation Report, Former TRW Microwave Site, *supra* at pg14.

33 ⁹³ *Id* at 8-9.

1 70. On April 9 2021, Apple (Steiger) emailed Gjovik: the December 2015 vapor
2 intrusion testing report, a link to Beacon USA passive sampler fact sheet, and a link to FYR now
3 posted on EPA website, was not published before. On April 11 2021, Gjovik emailed Steiger
4 and Waibel additional questions, including “Per your 2015 report and the 2019 report it sounds
5 like PCE, TCE, and Chloroform levels are either remaining stable or even increasing under the
6 buildings. Considering that, would it be possible to request annual VI testing in the TRW
Microwave site?

7 71. On April 11 2021, Gjovik emailed Steiger and Waibel additional questions,
8 including “Apparently the HVAC couldn’t be turned off in Section 3 during the Dec 2015
9 testing so indoor/outdoor air was circulating. Was there any testing done after that with the
10 HVAC always off? Or was the May 2015 testing the last indoor air testing done in that section
11 under ideal VI testing conditions?”

12 72. On April 21 2021 Gjovik emailed Steiger, Jain, and Waibel: “I’m trying to
13 understand the 2015 VI testing. Is it correct that both the June & Dec testing was only a 10hr
14 sample? (Pg7) (All previous testing looked like it was 24hr-48hrs in comparison). Based on the
15 previous history of testing results that were above industrial limits, what was the rationale for
accepting such a shorter duration of testing?”

16 73. On April 21 2021 Gjovik emailed Steiger, Jain, and Waibel: “It also looks like
17 when they did the 2015 testing, the indoor air was 50-60 degree Fahrenheit, and outside was 40-
18 50 degrees. (Pg6) Was that true for both June and Dec? Doesn’t heat usually encourage VI? Was
19 there any testing with the building at a temperature that it would be with employees working in it
20 and the results came back in limits? I would think the June testing was warmer, but I don’t think
21 is see any of the detailed June testing details included in the report. Can you share those too
please?”

22 74. On April 30 2021, Gjovik emailed the US EPA (Perez-Sullivan):
23 “it sounds like there hasn’t been any indoor air testing (sub sla[b] or indoor air) since
24 2015. (They are currently planning to do testing this year, though they didn’t fully explain
25 why they decided to start testing this year after six years). I reviewed the indoor air reports
26 from 2003, 2004, 2013, & 2015. It appears there is a long history of indoor air
27 measurements with chemicals of concern above max industrial risk levels. My desk looks
28 to be in a bit of a hot spot too. In 2015, there was some testing done (May & Dec it
appears) but instead of 24/48hr — they did 10hr, at least for Dec. I’m still waiting to see
the details of the May testing. And at least in Dec 2015, it appears they weren’t able to
fully shut off the HVAC either. ... : I am curious what the EPA’s expectations are for the

1 frequency (how often) & duration (how long/intensive) of indoor air testing in a building
2 like TRW Microwave. Did you approve that they could stop doing indoor air testing after
2015 — or is it up to the responsible party to decide?”

3 75. On April 30 2021, Gjovik emailed the US EPA (Perez-Sullivan), “These are my
4 best attempt at mapping results.... But take with a grain of salt... I only play an industrial
5 hygienist on TV. J/k. But seriously, also mapped where I fainted in 2019. Our HR team pushed
6 me to file a worker’s comp claim about it and the workers comp administrator wanted to call it
7 “continuous trauma” for my time working in at least that building. (Apple had plenty other
8 Superfunds and chemical release sites I visited too). I’m not sure where this will go though... if
9 Apple wasn’t testing the indoor air, it seems impossible to know if there were problematic
10 chemicals in the air or not when it happened. I did have more fainting in the office in 2020, but it
11 was while this was going on too: [https://sfbayview.com/2021/03/i-thought-i-was-dying-my-](https://sfbayview.com/2021/03/i-thought-i-was-dying-my-apartment-wasbuilt-on-toxic-waste/)
12 [apartment-wasbuilt-on-toxic-waste/](https://sfbayview.com/2021/03/i-thought-i-was-dying-my-apartment-wasbuilt-on-toxic-waste/) So I just assumed the fainting in 2020 was carry over from
13 the apartment I moved into Feb 2020. I haven’t been back to the office since last year. I’ve been
14 fine since I moved out of that apartment in Sept 2020 (and haven’t been back to the office
either).”

15 76. On May 17 2021, during a meeting with Gjovik, Steiger, and Waibel, Apple said:
16 “The report Michael previously shared should include all details for both May & Dec 2015
testing.”

17 77. On June 7 2021, US EPA (Perez-Sullivan) wrote to Gjovik:

18 “Superfund cleanups are governed by a complex network of laws, regulations,
19 and guidance. Where there are vapor intrusion concerns, assessments and
20 monitoring are conducted based on site-specific information, such as contaminant
21 concentrations, site uses, history, available data, and mitigation measures. At the
22 TRW Microwave Superfund Site, groundwater monitoring has been ongoing.
23 Since 2016, groundwater concentrations for the TRW Microwave site-specific
24 constituents of concern (primarily TCE and breakdown daughter products) have
25 been stable. Because TRW Microwave Site conditions have not changed, EPA
26 believes the remedy in place at the site remains protective and has not required
27 additional ongoing indoor air sampling. The Regional Water Quality Control
28 Board (RWQCB) and EPA have overseen the cleanup actions at the TRW
Microwave Site. Over the decades, site remedies have greatly reduced
contaminant concentrations, including the primary constituent of concern, TCE
in groundwater. TCE concentrations at the TRW Microwave Site have declined
from upwards of 10,000 parts per billion (ug/L) in the 1980s to generally less than
100 µg/L today (for context, 1 part per billion would be equal to 1 drop of ink in

1 billion drops of water). The vapor intrusion risk at the site has been addressed under RWQCB and EPA oversight multiple times by the Northrup Grumman Corporation (the responsible party), and the current owner of the property. In 2013 indoor air sampling was conducted in the then unoccupied 825 Stewart Avenue building, which was unfinished and had open conduits in the sub-slab. The results indicated that a few volatile organic compounds were present at concentrations greater than the generic health risk screening values at the time for workers.”

US EPA (Perez-Sullivan) added: “indoor air sampling was conducted in May 2015. The May sampling event was conducted with the HVAC system turned off as a worst-case scenario. The indoor air results were less than EPA’s generic health risk screening values based on a workplace exposure of 250 days per year for 25 years and demonstrated the effectiveness of the post-2013 measures to mitigate vapor intrusion. The results are available in a June 2015 report available on the EPA TRW Microwave website.”

78. On June 7 2021, US EPA (Perez-Sullivan) wrote to Gjovik: “Due to building renovations subsequent to the May 2015 indoor air sampling event, another indoor air sampling event was conducted in December 2015, which EPA agree with. The indoor air sampling event was conducted with the HVAC system off, except for one zone where it was reported that the HVAC system could not be turned off. The December 2015 results again demonstrated that the chemicals related to the TRW Microwave Superfund Site were less than EPA’s indoor air human health risk screening values for workers (note, ethylbenzene and toluene are not associated with the TRW Microwave Superfund Site).”

79. On July 2 2021, Gjovik submits ADA Medical Request for remote work due to needing to avoid the industrial chemical exposure, despite her complaints that is not an appropriate use of ADA, and Apple just needs to fix the safety issues. This was noted on her Issue Confirmation. (pg25)

80. On July 7 2021, Gjovik met with Waibel and Steiger again. In her August 23 2021 Issue Confirmation she describes it as “I meet with EH&S and Jenna and they tell me they won’t test the air before the cracks are fixed, they refuse to give me any details about what fixing the cracks entail, and again tell me they now won’t answer anymore of my questions. I reiterate I don’t feel safe in that building and I’m worried about vapor intrusion and I feel they’re trying to misrepresent the situation internally.”

81. On July 7 2021, Gjovik emailed US EPA (Perz-Sullivan) and wrote: “In addition, I’m not sure if you’re aware but after I started asking a lot of questions to Apple EH&S about

1 their oversight of TRW Microwave, they went from planning to test the indoor air this year to
2 then saying they may no longer test the air and if they do it's at a TBD time. They offered no
3 explanation for why they decided not to test and also told me they wouldn't answer any more of
4 my questions. Further, the environmental engineer who has overseen Apple's environmental
5 engineering & due diligence program for over seven years is now leaving Apple. He went on
6 medical leave within an hour of my last conversation with them when they said they wouldn't
7 answer my questions and they might not test the air now — and upon coming back from leave
he's now leaving Apple imminently. This all seems quite peculiar to me.”

8 82. On July 7 2021, Gjovik emailed US EPA (Perz-Sullivan) and wrote: “Can you
9 please share a link to the May 2015 indoor air testing report? Apple told me the Dec 2015 report
10 included the May 2015 data and there was no separate May 2015 report. That didn't sound right
11 and I've been trying to track down the detailed May report. Can you confirm if the May 2015
12 testing was only 8hrs in duration like the Dec 2015 testing was? Was there any 24hr+ Summa
testing ever performed in the TRW building that passed the EPA?”

13 83. On July 7 2021, Gjovik emailed US EPA (Perez-Sullivan) and said: “When they
14 do test the indoor air they plan to do a 1week passive sampler, with HVAC fully on, and with
15 employees using the facilities as normal. I pointed out HVAC on would bring in outdoor air and
16 dilute the indoor air if VI — and pointed out that if they results come back high, they won't
17 know if its' VI or if it's employees that were cleaning/etc. They told me what they're doing is
18 routine, best practice, and above and beyond what's required. I asked if they could at least do a
19 48hr summa with HVAC off & employees out in addition to the 1wk one and they said no,
20 saying their way would give better results.”

21 84. On July 7/8 2021, during a Meeting with Gjovik, Waibel, Steiger, and Jain,
22 Steiger said: “When the indoor air is eventually tested at some unknown point it will be with
23 passive samplers with HVAC on & running as normal, and employees inside working as
24 normal.” Gjovik expressed concerns that “HVAC brings in outdoor air and will dilute the air
25 inside — and employees working inside can cause their own chemicals releases which can
26 disturb / comprise the results. I also mentioned if the results come back high, then EH&S can
27 then say it was the employees causing the chemicals (like they did in 2015 with the unconfirmed
28 "construction" chemicals). Gjovik included this in her meeting notes as well as “Michael and
Atone say their testing plan is protocol and over and beyond.”

1 85. On July 9 2021, Gjovik complained to her coworker Mike, an Apple manager,
2 about Apple’s current plan for vapor intrusion testing.

3 “The problem is, the way they’re testing the air now is bogus. Gold standard is HVAC
4 off, no people around, at least 48hrs, summa & T015. 1 week would be great if the
5 above was met — but HVAC on will be bringing in inside air, which would dilute
6 whatever chemicals are in the air inside. Further people around mean they can be
7 releasing their own chemicals (cleaning, etc) which might show up in the results —
8 but also could neutralize other chemicals that might be in the air. I believe they’re
9 only testing for COCs still, not a full T015 panel — so it’s more likely the COCs
10 would be neutralized and you wouldn’t even know it because without the panel, you
11 don’t even know what else is in the air. I had a whole big discussion about this last
12 year when my property manager decided to test the air in the apartment above mine
13 when I was testing my own air. Even DTSC admitted if they did that — the air would
14 be diluted because it’s higher up (the refused to test the ground floor which prob
15 would have showed the highest results, and also chemicals rising from below
16 apartments could show up and/or mix/neutralize chemicals inside. If I were Apple,
and I wanted to save face after all the last discussions and didn’t care about employees
health — this is what I’d do. They can’t “not test” now that I threw such a fit about
them threatening not to — but if they do test, they want to reduce the risk of them
finding the COCs in the air as much as possible. Thus, they’d do exactly what they
now say they’re going to do. During previous discussions they mentioned they’d do
it on a weekend, etc. This is a change of plans. I’m not happy⁹⁴

17 86. Around July 12 2021, US EPA emailed amongst themselves considering Gjovik’s
18 questions to Perez-Sullivan.

19 Can you please share a link to the May 2015 indoor air testing report? Apple told
20 me the Dec 2015 report included the May 2015 data and there was no separate
21 May 2015 report. That didn't sound right and I've been trying to track down the
22 detailed May report. ...Can you confirm if the May 2015 testing was only 8hrs
in duration like the Dec 2015 testing was? Was there any 24hr+ Summa testing
ever performed in the TRW building that passed the EPA indoor air thresholds?

23 ⁹⁵

Perez-Sullivan quoted Gjovik’s questions above and asked the site team for responses.

24 87. On July 20 2021, US EPA (Perz-Sullivan) emailed Gjovik and wrote: “Thanks so
25 much for your patience. The May 2015 indoor air testing was reported in a June 2015 report
26 available on the EPA TRW Microwave website here: [link] ... For your reference, the attached
27 California Environmental Protection Agency Office of Environmental Health Hazard

28 ⁹⁴ Ashley Gjovik email to M.E.; July 9 2021; Subj: Re: EHS Follow up

⁹⁵ US EPA email: July 12 2021, “no subject”

1 Assessment has adopted EPA Region 9's screening values for TCE. TCE is the primary chemical
2 of concern for the site and since 2013, subsequent to the remedial actions taken at the building,
3 TCE indoor air sample results have been less than EPA's applicable health risk screening
4 values."

5 88. On July 20 2021, Gjovik emailed US EPA (Perez-Sullivan) and said: "I see the
6 May test was 10hr ... so my question about when the last time a 24hr+ indoor air test was
7 performed in the TRW Microwave/825 Stewart building where the COCs were within the
8 acceptable EPA range for indoor air in industrial buildings is never. They've always failed."

9 89. On August 2 2021, Gjovik emailed Apple Human Resources, Waible, Okpo, &
10 Lageres the completed ADA request form and wrote: "Note: the questions about whether an air
11 purifier could mitigate Superfund vapor intrusion (so severe that a land use covenant with the
12 government prohibits elder care and day care on site) was particularly offensive, but so is the
13 fact itself that you're forcing me to release medical information & fill out forms to not be
14 poisoned."

15 90. The US EPA inspection occurred on August 19 2021.

16 91. On December 6 2022, the US EPA gave Northrop Grumman feedback on a vapor
17 intrusion testing plan via a formal letter including: "Include a footnote in Table 1 to indicate that
18 EPA will be notified immediately if indoor air results for TCE are above the accelerated
19 response value of 7 µg/m³ for commercial/industrial exposure and appropriate actions will be
20 taken to confirm the results and implement mitigation measures." "Edit the Addendum's main
21 text to include a summary description of the standard operation procedures (SOP) for the
22 activities to be performed (e.g., soil gas installation and sampling, indoor/outdoor air sampling,
23 differential pressure monitoring) and include the SOPs as attachments (or clearly reference the
24 SOP location in the document)."

25 92. On January 23 2023, US EPA gave Northrop Grumman more feedback about
26 their vapor intrusion testing plan including: "Table 2 is missing the reporting limits for L1
27 SUMMA and for Radiellos. Please note that it is likely the laboratory will not be able to report
28 vinyl chloride using Radiellos, just include in the foot note or in the text that this will be
addressed by the indoor air and sub-slab soil gas that will be sampled with SUMMA and used to
evaluate any detection of vinyl chloride." "It is likely the laboratory will not be able to report
for all chemicals (i.e., vinyl chloride) using Radiello® [passive sorbent] samplers. Detections of

chemicals reported in the indoor air (SUMMA) or sub-slab results will be used to evaluate potential human health risks.”

93. Note: this is the vapor intrusion testing Apple wanted to do unsupervised. It still had not occurred in 2023, and the tools Apple planned to use would not have even tested for one of the most dangerous chemicals. Further the test plan did need to go through US EPA and required US EPA feedback and approval.

94. On February 7 2023, the US EPA emailed Northrop Grumman saying: “Sampling activities proposed and discussed in this VI WP #3 include: 1) pre-building surveys, 2) sub-slab sample collection using SUMMATM canisters, 3) indoor and outdoor air sample collection using both SUMMATM canisters (over a 10-hour sampling duration) and Radiello® (passive) samplers (over a 7-day sampling duration), and 4) field parameter data collection including total organic vapor photo-ionization detector (PID) measurements, differential pressure measurements, indoor air temperature, and meteorological conditions such as wind, temperature, and air pressure (to be collected throughout the various sampling activities).” “The visit will include identifying, photographing, and removing any potential VOC sources from inside the building. Potential VOC sources will be identified using a photo-ionization detector (PID).”

95. The US EPA visited 825 Stewart Drive in person again in 2023 to oversee this vapor intrusion testing.

96. In October 2023, EPA proposed to ban the manufacture (including import), processing, and distribution in commerce of TCE for all uses, with longer compliance timeframes and workplace controls (including an exposure limit) for some processing and industrial and commercial uses until the prohibitions come into effect. The rule would protect consumers, workers, occupational non-users and bystanders from the harmful health effects of TCE.⁹⁶

iv. Institutional Control: Sub-Slab Ventilation System

97. In May 2015, Northrop Grumman completed the installation of a “sub-slab” ventilation system (“SSV”) inside the building. (The “slab” refers to the concrete foundation, and “sub-slab” is under the “slab.”) Northrop Grumman installed a ventilation system (horizontal “collection pipes”) beneath the slab foundation, which allow vapors to move

⁹⁶ US EPA: TSCA: TCE, <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-trichloroethylene-tce>

1 laterally, and connected the collection pipes to vertical vent risers that vent to the roof, in order
2 to provide a preferred pathway for hazardous waste vapors “that allow sub-slab contaminant
3 vapors to discharge to the atmosphere.”⁹⁷ The risers vent to the rooftop via wind-powered
4 turbines at the vent termination point.⁹⁸ This type of mitigation system is referred to as
5 “passive” (compared to “active” and “depressurization”) and is not as effective as other options
6 and not ideal when there’s known vapor intrusion occurring.⁹⁹ Northrop Grumman left multiple
7 “sub-slab monitoring ports” inside, which allowed access to the “collection pipes” from above
8 ground for diagnostic testing and sample collection.¹⁰⁰ Northrop Grumman then hired a
9 professional engineer to inspect and certify the sealing of the floor cracks and conduits at 825
10 Stewart Drive. (the slab is the primary mitigation to prevent vapor intrusion in this building).

11 98. In the second half of 2015, Apple also then renovated the building. Apple’s
12 installation of the HVAC system for the building in late 2015 included Apple sawing the sub-
13 slab vent stacks, on the main building roof, down from three feet to one foot, and then installing
14 the HVAC intake in close proximity to the sub-slab vapor exhaust vents, and low to the ground
15 where the vapors would be pooling on the roof, nearly guaranteeing re-entrainment of the
16 hazardous waste vapors into the HVAC system. Apple also installed tall ‘fencing’ around all of
17 this, which prevented the wind from moving the pooling air away from the HVAC intake vents
18 and preventing the wind from spinning the vent turbines. Apple’s activities introduced a
19 significant risk for re-entrainment of the effluent vapors into the building.

20 99. The industry standard for stack design is to ensure the stacks place the vent at
21 least 10 feet above the rooftop.¹⁰¹ The National Fire Protection Association specifies minimum
22 stack height of 10 ft to protect rooftop workers. For laboratory exhaust, the American Industrial
23 Hygiene Association recommends minimum stack height of 10 feet above adjacent roof line, and
24 stack height extending one stack diameter above any screen.¹⁰² (Compare to Apple’s 1 foot).

25 ⁹⁷ San Francisco Bay Regional Water Board, Vapor Intrusion Mitigation Guidance, Pg 10 (June 2022).

26 ⁹⁸ San Francisco Bay Regional Water Board, Vapor Intrusion Mitigation Guidance, Pg 21 (June 2022).

27 ⁹⁹ ITRC, *Vapor Intrusion Pathway: A Practical Guideline*, Pg 48, (2007),
28 <https://semspub.epa.gov/work/01/533755.pdf>

¹⁰⁰ San Francisco Bay Regional Water Board, Vapor Intrusion Mitigation Guidance, Pg 10 (June 2022).

¹⁰¹ OSHA Technical Manual (OTM), Section III: Chapter 3, *Ventilation Investigation* (“Should be 10 ft
higher than any roof line or air intake located within 50 ft of the stack (Figure III:3-8). For example, a
stack placed 30 ft away from an air intake should be at least 10 ft higher than the center of the intake.”)
<https://www.osha.gov/otm/section-3-health-hazards/chapter-3>

¹⁰² ANSI/AIHA Z9.5 (“Be in a vertical up direction at a minimum of 10 feet above the adjacent roof line
as so located with respect to opening and air intakes of the laboratory or adjacent buildings to avoid re-
entry.”)

1 100. On April 2 2021, Gjovik emailed Steiger and Waibel: *“I see vapor intrusion*
2 *issues were found inside SD01 in 2013. Was there any further remediation other than the*
3 *installation of the passive barrier & ventilation system? Was the ventilation system ever made*
4 *active, or is it still passive? Is there active monitoring too — or just ad hoc?”*

5 101. On April 11 2021, Gjovik emailed Steiger and Waibel additional questions,
6 including *“Page 12 of this report says that 2015 tenant improvements didn’t actually have much*
7 *impact on the VI control system in the building. You mentioned that after the improvements in*
8 *2014-2015, now things are under control. Did something happen after this report was published*
9 *to get them under control?”*

10 102. Gjovik remembered Apple modifying the HVAC system during the wildfires in
11 2020 and mentioned it to US EPA. US EPA expressed interest and must have mentioned it to
12 Apple. On May 17 2021, during a meeting with Gjovik, Steiger, and Waibel, Apple said Apple
13 “would never turn HVAC off and if it someone said they did during wildfires, that must be a
14 miscommunication.”

15 103. On June 7 2021, US EPA (Perez-Sullivan) wrote to Gjovik: “Since 2013, the 825
16 Stewart Avenue building was renovated and Northrup Grumman and the now current property
17 owner proactively implemented a number of protective measures to prevent vapor intrusion into
18 the building: o August/September 2014: A sub-slab vapor collection system was installed
19 underneath the site building to vent vapors to the atmosphere.

20 104. On June 7 2021, US EPA (Perez-Sullivan) wrote to Gjovik: “Thank you for
21 conveying that during the wildfires last year the HVAC system was turned off, as it is important
22 for EPA to be aware if there’s a significant change to site conditions. Even with the HVAC
23 system off, the sub-slab vapor collection system will continue to vent vapors that collect under
24 the building to the atmosphere.

25 105. On July 2 2021, Gjovik emailed Steiger, Jain, and Waibel: “Any I asked if they
26 could also do a 48hr Summa canister with a T015 panel on a weekend with no employees inside
27 & HVAC off, near my desk, before sealing the floor — to have an uncompromised test — and
28 they said no.”

 106. On July 8 2021, during a Meeting with Gjovik, Waibel, Steiger, and Jain, Apple
said: “The “pathway survey” this year was the first time the SD01 floor has been surveyed for
potential VI issues since 2015 Unknown at this point if cracks are deep enough that air could be
coming through from beneath however Antone was “unconcerned by what he saw” and he and

1 Michael think the passive sub-slat vents should be adequately routing the soil vapor outside the
2 building (not up/inside, aka intrusion).”

3 107. On July 26 2021, US EPA CERCLA QA (Plate) discovered and informed the
4 CERCLA Site PM (Shulman): “In the main building the SSD vents appear to be under
5 components of the chiller. This is not appropriate and we should discuss. We should also get the
6 distances between the vents and the HVAC outdoor air intakes.”

7 108. On August 19 2021, US EPA inspection notes (Plate) included: “Roof, West Bldg
8 Vents are exactly 10' from HVAC, just meeting code. Not great for VOCs bc venting into hvac.
9 Would be better/ need to extend 10' high. Roof, East bldg stack issues. Vents too close to chiller.
10 Cut too low. 4 stacks need to be extended. Ok per code but not COCs. Main bldg is under chiller
11 stack, not even sure how extend.” “Want HVAC off for worst case short-term exposure
12 scenario.”

13 109. On December 13 2021, US EPA emailed Northrop: “Can you give me an update
14 by this Wednesday on EPA’s comments and RTC’s attached? I particularly need to know the
15 specifics for what changes to the roof vents for the SSD system that NGC is recommending for
16 EPA review and what plans NGC has to formalize the SSD system maintenance inspections.”
17 Northrop Grumman replied same day: “We’ll conduct a preliminary review of the SSD system
18 in the upcoming weeks base don the photos taken during the recent Site visit. If an additional
19 site visit is needed, we plan to coordinate an inspection in January 2022 and have a draft
20 evaluation of the SSD system ready, as well as the system O&M work plan, by mid-March
21 2022.”

22 110. On December 27 2021, US EPA CERCLA QA (Plate) emailed the site team:
23 “attached is my draft review of the TRW RTC and the attached test and balance report. There
24 was insufficient information on the building layout (room and zone sizes), building exhaust, and
25 operations to make many conclusions from the test and balance report. Also since the building
26 layout/operation has been modified since the test and balance I am not sure how accurately it
27 reflects current operations. It did seem odd to me that the environmental chambers were not on
28 dedicated ventilation systems.”

111. On December 28 2021, a US EPA CERCLA QA report noted: “[SSD System
Vent Pipes] The previous comment stands, it is recommended that vent pipe be relocated and or
raised to avoid the potential for subsurface vapors to be pulled into the ventilation system and to
improve SSD operations.”

1 112. On January 3 2022, US EPA CERCLA QA sent a report to the CERCLA site
2 team saying: “Attached is QA’s review of the 2015 HVAC test and balance report and TRW’s
3 timeline to address EPA site visit follow-up comments provided in an October 7 letter. I will
4 respond to TRW next week stating that their proposed timeline to provide a draft evaluation of
5 the SSD system by mid-March 2022 is inadequate.... Our existing order with NGC does not
6 address VI, we do not have one with Apple. However we do have a BFPA with the current
7 owner (but not Apple), which specifies to maintain BFPA status, the current owner is prohibited
8 from conducting building construction, renovation, or other modification activities that may
9 affect the integrity of the VI mitigation system.” They then sent emails back and forth released
10 via FOIA as almost entirely redacted as “Attorney Client Privilege.”

11 113. On February 12 2022, US EPA emailed Northrop Grumman “Re: TRW
12 Microwave Site, 825 Stewart Drive, Follow-up on the Aug 19 2021 Site Visit” saying “Its been
13 a couple months since your last update and half-a-year since we conducted the site visit to 825
14 Stewart Ave... Please submit my March 15 2022 a complete response to EPA’s October 7 2021
15 comments. Include in NGC’s response any proposed modifications to the SSD system vent
16 stacks to address potential emissions from being pulled into the building’s HVAC. A.. By March
17 31 2022, please respond to EPA’s October 7 2201 request to submit a plan that documents the
18 scope of the SSD systems’ long-term operations and maintenance and a figure showing where
19 the existing sub-slab sampling ports are located. We expect GI DC Sunnyvale LLC will
20 cooperate with NGC’s efforts consistent with EPA’s 201[6] prospective purchaser letter
21 (attached).

22 114. On April 25 2022, a US EPA CERCLA QA report noted feedback on the O&M
23 plan for Gjovik’s office, including: “A building-specific inspection checklist should be
24 developed and included with this plan” and “[SSD Evaluation; Vent height] The current height
25 proposed does not appear to be sufficient to clear obstructions. Clearing obstructions is
26 important for dispersion of pollutants and to provide sufficient exposure to wind (which provides
27 part of the driving force for proper passive SSD operation).”

28 115. On May 20 2022, a US EPA CERCLA report noted: “The discharge of the pipes
should be above the screen walls to be exposed to the wind as much as possible and ensure there
is no chance of re-entrainment into the building. VMS recommends the exhaust points are
located above the screen wall, whether the system is passive or active.”

1 116. On July 21 2022, a US EPA letter to Northrop Grumman noted: “Based on the
2 uncontrolled and unpredictable nature of many weather variables that could potentially affect the
3 vapor intrusion into a building, an approach to evaluate vapor intrusion in any site, is to collect
4 multiple lines of evidence. Based on that, EP A requires Northrop Grumman to evaluate the
5 current sub-slab soil gas concentrations as well as the building-slab pressure differentials at the
6 time of the indoor air sampling, and regardless of the indoor air results. The sampling plan
7 should include outdoor air measurements at the intakes of the HVAC systems. The data from the
8 sub-slab soil gas samples and the pressure differentials will assist in determining whether the
9 passive SSV should be converted to an active system. Additionally, this data will provide
10 information on the current conceptual site model. Please submit a sampling plan that includes
11 indoor air sampling with building-slab pressure differential monitoring, sub-slab soil gas
12 sampling and outdoor air sampling at the HVAC intakes.”

12 117. On July 28 2022, Northrop Grumman emailed US EPA saying: “I’d like to
13 request an extension to prepare a sampling and analysis plan for indoor air and sub-slab gas
14 samples at the former TRW microwave site. Over the last several weeks, AECOM and NG have
15 attempted to contact Apple (the current tenant at the Site) and GI Partners (the property owner)
16 to coordinated Site access and sampling locations but have not received a response. As such, we
17 will be unable to finalize an SAP within 30 days in response to your latest letter dated 21 July
18 2022. Please let us know if US EPA can assist with coordination with Apple and GI Partners to
19 conduct this work.” That day EPA responded and said, “EPA can assist with coordination with
20 Apple and GI Partners to conduct this work.”

20 118. On July 28 2022, US EPA then emailed amongst themselves saying: “In advance
21 of providing assistance to gain access, it would be helpful to ask NGC for a
22 summary/chronology of the attempts that it has made to get access (date/format of attempt/who
23 made the attempt/etc.) and also get a copy of the access form they were asking to be signed. Also
24 it would be helpful to know dates/scope of access they are seeking.”

24 119. On June 23 2023, Northrop Grumman published a Groundwater Monitoring
25 Report that included a sub-slab ventilation inspection report, noting an onsite inspection on
26 October 11 2022.¹⁰³ The inspection notes included: “The vent risers on the main building ... are
27 currently approximately 1-foot tall, the installed height was approximately 3-feet... During the
28

¹⁰³ US EPA, *2022 Annual Groundwater Monitoring Report Former TRW Microwave Site, 825 Stewart Drive, Sunnyvale, CA* (June 1 2023), pg133, <https://semspub.epa.gov/work/09/100035154.pdf>

1 site visit, only the roof turbines on the north building and one of the two roof turbines on the
2 west building were observed to be spinning due to ambient wind.” Apple still had not fixed the
3 HVAC/sub-slab vent exhaust issues.

4 120. Among other issues, and violations of state and local laws, Apple’s actions
5 related to the HVAC and sub-slab ventilation systems at 825 Stewart, and failure to install
6 exhaust monitoring and abatement systems at 3250 Scott Blvd, likely violated 42 US Code
7 7413(c)(1) by constructing new sources and modifying existing sources, failing to comply with
8 design and work practices, and emitting hazardous pollutants in violation of NESHAP. It is a
9 criminal violation of 42 US Code 7413(c)(2)(C) to fail to install monitoring devices required by
10 the Clean Air Act. In addition, Apple’s conduct likely violated its CERCLA obligations to
11 inform, consult, and allow federal oversight for issues and modifications to the institutional
12 controls at the site.

12 v. Institutional Control: Integrity of the Slab

13 121. Apple penetrated the slab (concrete floor) of the building at 825 Stewart Drive in
14 late 2015. US EPA records note that “*tenant improvements performed in late 2015... included...
15 penetration and subsequent re-sealing of the concrete slab for installation of additional piping
16 and utilities.*”¹⁰⁴ Apple claims only AECOM inspected the floor prior to penetration and after
17 sealing.¹⁰⁵ Under information and belief, Apple never engaged an independent professional
18 engineer for inspection and certification as Northrop Grumman did in May 2015.

19 122. The US EPA notes that the “*rupture [of] an engineering cap*” is a “*compromise
20 [to] the integrity of a response action for that site.*”¹⁰⁶ US EPA explains that vapor intrusion
21 “*primarily enter[s] through openings in the building foundation*” through “*cracks in the
22 concrete slab.*”¹⁰⁷ The US EPA explains that when there are cracks in the slab, “*vapors resulting
23 from the volatilization of contaminants in soil may be transported into indoor spaces,*” and
24 “*inhalation of these vapors by indoor workers may be an important exposure pathway.*”¹⁰⁸ When

24 ¹⁰⁴ AECOM for Apple, *Vapor Intrusion Evaluation Report, Former TRW Microwave Site, 825 Stewart*
25 *Drive Sunnyvale, California*, US EPA SEMS-RM DOCID # 1158560 (February 2016),
<https://semspub.epa.gov/work/09/1158560.pdf>

26 ¹⁰⁵ Id.

26 ¹⁰⁶ US EPA, *Institutional Controls*, *supra* at page 29 (“8.3 Periodic Reviews”).

27 ¹⁰⁷ US EPA, *A Citizen’s Guide to Vapor Intrusion Mitigation*, EPA 542-F-12-021 (September 2012),
28 [https://www.epa.gov/sites/default/files/2015-
04/documents/a_citizens_guide_to_vapor_intrusion_mitigation_.pdf](https://www.epa.gov/sites/default/files/2015-04/documents/a_citizens_guide_to_vapor_intrusion_mitigation_.pdf)

¹⁰⁸ US EPA, *Supplemental Guidance For Developing Soil Screening Levels For Superfund Sites*,
OSWER 9355.4-24 (December 2002).

1 Apple told Gjovik there were cracks in the concrete floor (the “slab”) at her office, Gjovik told
2 Apple they needed to report the issues to the US EPA, but Apple told her they do not need to tell
3 the US EPA. Gjovik asked Apple to test the air before they fix the cracks, but Apple said they
4 intentionally will not test the air until after they fix the cracks. Gjovik told Apple the cracks were
5 “changed circumstances” at the federally overseen CERCLA site, and that Apple must consult
6 with the US EPA about the cracks and Apple’s plan to fix the cracks, including their air testing
7 work plan. Apple once again told Gjovik that they were right, she was wrong, and she should not
8 talk to anyone else about her concerns. Apple told Gjovik it was fine because they said so, and
9 she should not tell anyone else about her concerns, but Gjovik refused and instead reported
10 Apple’s violations to her coworkers, the government, and the press. Apple fired Gjovik because
11 she did so.

12 123. Like in *Parada v City of Colton*,¹⁰⁹ where a city building department employee
13 refused to allow residential construction by certain city officials without building permits as
14 required by law, Gjovik refused to allow Apple to cover-up the cracks in the floor without
15 reporting them to the US EPA under CERCLA, or to have the US EPA oversee testing and
16 repair under CERCLA. Gjovik and Apple argued about this repeatedly with Apple insisting they
17 refused to tell the US EPA about the work because it they did not have to.

18 124. On April 2 2021, Gjovik had written to Apple: “Isn’t it problematic to have an
19 elevator shaft almost directly over the Eductor pit? Shafts are VI freeways. There are two
20 bathrooms right over it as well — and plumbing is also often a freeway for VI.” On April 2
21 2021, in a meeting with Gjovik, Steiger, and Waibel, Apple said: “Was sealed & did testing to
22 confirm seal effective... when Apple looked at the site, considering leasing, made tenant
23 improvements. Had to cut into floor — ensured piping and barrier not disrupted — so
24 responsible party inspected Apple’s work.”

25 125. On April 9 2021, Apple told Gjovik the: “*Next step is a floor penetration survey.*
26 *No testing has been done yet, but results will be provided when completed.*”

27 126. On June 7 2021, US EPA (Perez-Sullivan) wrote to Gjovik: “Since 2013, the 825
28 Stewart Avenue building was renovated and Northrup Grumman and the now current property
owner proactively implemented a number of protective measures to prevent vapor intrusion into
the building April 2015: Openings through pipes, seams, or cracks in the building’s concrete

¹⁰⁹ 24 CA4th 356 (1994).

1 sub-slab were sealed to prevent vapor intrusion. Additionally, the spaces between the walls of
2 the three sections of the buildings were also sealed.”

3 127. On July 2 2021, Waibel emailed Gjovik: “I’m sending an iCal for a follow up call
4 next week with EHS. [Steiger] will be leaving Apple shortly after our call, so Antone Jain will
5 be joining our call as well to step into the conversation in Michael’s place. As [Jain] is
6 responsible for scheduling some of the next steps in the testing we have discussed, he is very
7 knowledgeable about the program. Antone recently shared an update on SD01 that I am also
8 forwarding on his behalf: In May we performed step one of a three step process. We did the
9 floor pathway survey, checking for cracks and gaps that can build over time due to natural floor
10 movement. Based on that, we developed a floor sealing plan. Right now, we are in step two
11 scheduling the floor crack sealing work by a contractor (expected within a month according to
12 verbal from the construction management team). Once the floor sealing is complete, we will
13 schedule step three the indoor air testing at a TBD date. When that is done, we will provide you
14 the data.”¹¹⁰

15 128. On July 2 2021, Gjovik emailed Steiger, Jain, and Waibel: “Any chance EH&S
16 would be willing to do a “before” air testing in SD01, at least my lockdown (Sim City), to
17 determine if the floor cracks were/are allowing vapor intrusion into the office space? It seems
18 like it would also be helpful data to have to compare to the testing “after” the floor is sealed —
19 especially since the last testing was six years ago — and considering my 2019 fainting incident
20 at my desk & in Mike’s office. If I was exposed, I’d really like to know to what chemical & at
21 what levels, for future cancer monitoring, etc.”

22 129. Gjovik emailed Lagares on July 4 2021, complaining: “[Steiger], who has been
23 overseeing these chemicals clean up sites for Apple for eight years is now quitting / fired. The
24 last meeting I had with him he read a script, I assume from legal, where he very uncomfortably
25 said that he is the expert, and the oversight was all his decision, and he personally feels its safe.
26 Literally an hour after that meeting he went on short term disability medical leave — and now
27 apparently upon returning, he’s leaving Apple. Also, Jenna’s update from EH&S included the
28 fact they did find cracks in the floor of my office (which is exactly how vapor intrusion from
chemicals directly beneath the floor can end up in the indoor air). They said they would test the
indoor air at a “TBD” time, but only AFTER fixing the floor. I specifically asked if they can test
BEFORE they fix the floor since they haven’t tested the indoor air for six years, since 2015

¹¹⁰ Email from Jenna Waibel to Ashley Gjovik; July 2 2021 12:08pm; Subject *Follow up call next week*

1 before any Apple employees were moved in — or anyone it was vacant forever — and despite a
2 long history of indoor air vapor intrusion above max industrial limits, Apple only did “limited
3 testing” and called it good, even though that testing showed industrial chemicals again above
4 industrial limits. I told EH&S & Jenna I want to know which chemicals are in the air and at what
5 levels — for future cancer monitoring, etc. The only reason I can think of that they’re refusing to
6 do this testing after they previously planned on doing it, was that all the questions I was asking
7 were very good questions and revealed major gaps/issues — so they’re going out of their way to
8 not have evidence of their negligence. I think everyone is forgetting I work in engineering & I’m
in law school. I know how toxic torts work.”¹¹¹

9 130. On July 7 2021, Gjovik emailed Steiger, Jain, and Waibel meeting notes quoting
10 Apple’s statements: “Unknown at this point if cracks are deep enough that air could be coming
11 through from beneath however Antone was “unconcerned by what he saw” and he and Michael
12 think the passive sub-slat vents should be adequately routing the soil vapor outside the building
13 (not up/inside, aka intrusion).” “During the floodway survey they did not look under the carpet
14 — so the area around [Gjovik’s] desk (a hot spot) was not surveyed for cracks or other issues
15 “Any I asked if Apple has done this floor-sealing work in other buildings with employees
16 currently working in them and I was told “they have done it for two or three buildings.” I said I
17 was concerned they were misrepresenting the “routineness” of this work this year & I asked
18 which buildings they did the “routine floor sealing” in previously and Jenna told me “they won’t
19 discuss buildings I’m not in,” “won’t answer that question,” and “that level of detail is not
appropriate for this call.”

20 131. On July 7 2021, Gjovik emailed Steiger, Jain, and Waibel: “I questioned the
21 current approach and was total its “protocol” and “best practices” and upon asking to review the
22 protocol documents to better understand them I was told there were none internally and I can
23 search online the general terms. I mentioned guidance I’ve received from the CA Dept of Public
24 Health Env Investigations unit around vapor intrusion investigations/testing and [Steiger] told
25 me that agency doesn’t have expertise on vapor intrusion (despite them being seem as experts on
vapor intrusion impacting public health & communities).”

26 132. On July 7 2021, during a Meeting with Gjovik, Waibel, Steiger, and Jain,
27 Gjovik’s meeting notes recorded Apple saying: “EH&S refuses to test the indoor air before they
28 seal the vapor intrusion pathways, saying the 2015 results show the mitigation was working. I

¹¹¹ Ashley Gjovik email to Antonio Lagares; Date: July 4 2021 5:37pm; Subject: *Introduction*

1 asked if the change of building circumstances (i.e. cracks, holes) don't then need an evaluation
2 to see if there was VI and then confirm the new fixes actually fix it — they said no.” “Michael
3 and Antone said [they had not told US EPA about the cracked slab], because their work on the
4 building is “voluntary” “During the floodway survey they did not look under the carpet — so the
5 area around [Gjovik's] desk (a hot spot) was not surveyed for cracks or other issues.”

6 133. On July 7 2021, Gjovik emailed US EPA (Perz-Sullivan) and wrote: “Also, as
7 you mentioned “it is important for EPA to be aware if there's a significant change to site
8 conditions,” I would hope you've already been informed that there are apparently cracks in the
9 floor of Stewart 1 and Apple is pursuing a “floor sealing plan.” See quote below from Apple
10 EH&S. They apparently did their first formal “vapor intrusion evaluation” walkthrough ever this
11 May and noticed the cracks. I'd ask again, considering this and considering my fainting spell in
12 2019, if the EPA is still confident that the vapor intrusion is under control.

13 In May we performed step one of a three step process. We did the floor
14 pathway survey, checking for cracks and gaps that can build over time due to
15 natural floor movement. Based on that, we developed a floor sealing plan.
16 Right now, we are in step two scheduling the floor crack sealing work by a
17 contractor (expected within a month according to verbal from the construction
18 management team).”

19 Gjovik responded asking:

20 Thank you for the update! Glad you hear y'all decided to proceed with the
21 testing, even if TBD timing. Any chance EH&S would be willing to do a
22 “before” air testing in SD01, at least my lockdown (Sim City), to determine
23 if the floor cracks were/are allowing vapor intrusion into the office space? It
24 seems like it would also be helpful data to have to compare to the testing
25 “after” the floor is sealed — especially since the last testing was six years ago
26 — and considering my 2019 fainting incident at my desk & in Mike Ertell's
27 office. If I was exposed, I'd really like to know to what chemical & at what
28 levels, for future cancer monitoring, etc. Thanks!¹¹²

23 134. On July 7 2021, Gjovik emailed US EPA (Perez-Sullivan) and said: They kept
24 saying the whole process was routine but eventually admitted they've never done it before for
25 any of their Apple buildings with employees actively working inside. They also told me again
26 that now they won't answer any more of my questions about the safety of the building. I told
27 them I remain very concerned the building is not safe.

28 ¹¹² Email from Ashley Gjovik to Jenna Waibel; July 2 2021 2:55pm; Subject Re: *Follow up call next week*

1 135. On July 7 2021, Gjovik emailed US EPA (Perez-Sullivan) and said: “They’re
2 refusing to test the indoor air *before* they seal the floor and won’t give me any reasons why
3 other than the 8hr limited testing from 2015 They won’t give me any details of what the “floor
4 sealing process” entails. They said they only did a “quick walk-through survey” for cracks and
5 only saw what was readily available (I asked if they looked under the carpet by my desk, which
6 is a hot spot in the building, and they said no) — they made sure to say it wasn’t an “evaluation”
7 for whatever reason. They admitted this is the first walk through they’ve done since 2015 in the
8 building.”

9 136. On July 12 2021 Gjovik texted her coworker Mike: *“If you end up in the office*
10 *anytime soon can you please think about taking photos of the cracks in the floor... I need to*
11 *drop some stuff off end of July, but they may have sealed them by the time I get there. If possible,*
12 *try to capture depth in the pic.”* He responded: *“Yeah, I can do that the next time I am in the*
13 *office.”* Mike responded, *“Are there any specific areas where the cracks are?”* Gjovik
14 responded: *“I have no idea; they literally wouldn’t give me any details about it an every time I*
15 *asked ER stepped in and was like THAT LEVEL OF DETAIL IS NOT APPROPRIATE FOR*
16 *THIS MEETING.”*

17 137. On July 18, in Ms. Gjovik’s weekly status to Dave Powers & his mgmt. team, she
18 wrote: “EH&S says they’re not going to answer any more of my questions about chemical
19 exposure in SD01. There are apparently cracks in the floor that need re-sealed, but won’t give
20 me any details about how deep, where, what resealing means, or the risk that there has been
21 vapor intrusion through those cracks.”

22 138. On July 19 2021, Gjovik emailed US EPA (Perz-Sullivan) and wrote: “Checking
23 in — any update? I’m locking this down with a national journalist. P.S. if you haven’t already
24 connected the dots, the “responsible party” for the Sunnyvale TRW Microwave site is Northrup
25 Grumman, who’s ex-CEO and ex-President (and ex-CFO of TRW Microwave), Ronald Sugar, is
26 a current & long time Apple board member (10yrs+). So the guy who was running the
27 companies responsible for this site’s pollution, clean-up, vapor intrusion etc — is one of only
28 eight Apple board members. He also chaired Apple’s Audit & Finance committee, which I
assume would oversee budgets for things like... Apple’s facility and safety oversight. If you’re
trusting they’re all doing the right thing, maybe they are, but I’d hope you might poke around a
bit and see what exactly this whole floor crack / floor sealing thing is about — in additional to
the lack of air testing, and refusal to test the air before they seal the floor.”

1 139. On July 20 2021, Gjovik emailed US EPA (Perez-Sullivan) and said: *“Did you*
2 *talk to Apple & NG about the cracks in the floor and floor sealing plan? They told me they*
3 *didn’t notify the EPA about and didn’t plan to, despite me telling them they probably are*
4 *required too. They kept saying everything was “voluntary.”*

5 140. On August 2 2021, Apple EHS sent a notice they planned to do EHS work in
6 Gjovik’s office. The notice said *“EHS Assessment @ Stewart 1” on August 4th “All Day” and*
7 *noted “there will also be testing in [three office spaces].”* August 2 2021, Gjovik quickly texted
8 her coworker Mike with a screenshot of the notice and said *“What does testing mean?... Any*
9 *chance you took pictures of the cracks?”* Mike had noted and asked, *“Any new updates on the*
10 *testing in SD01? Still ‘TBD’?”* Gjovik responded: *“They told me they’re not answering anymore*
11 *of my questions and they’ll reach out to me when they feel like it.”*

12 141. On August 3 2021 Gjovik texted her coworker Mike and showed him photos
13 taken by Simon and Eddie of the cracks in the floor. Mike responded *“Well, definitely some*
14 *cracks in the floor. Also, a ton of the floor (in all cubicle / office space) is all under carpet, so*
15 *how do they know what is cracked under there?”* Gjovik responded: *“They said they weren’t*
16 *going to look under the carpet. Because they’re smart and talented people I should stop asking*
17 *questions.”*

18 142. On Aug 3-4 2021, Gjovik asked managers on her team who were onsite at the
19 building, Simon Moen & Eddie Borjas, to take photographs of the cracks in the floor as
20 evidence, fearing Apple was attempting to cover-up the safety issues and Gjovik and her
21 colleagues would never understand if they were exposed to chemicals in way that harmed their
22 health. The managers gathered the evidence for Gjovik & Gjovik involved employee relations of
23 what they were doing and showed them the photos.

24 - Gjovik: Weird ask but if either of you are in [Stewart 1 office] today can you please try to take
25 detailed pics of any cracks you see in the floor – the cement – EH&S is supposed to fix it
26 tomorrow-ish I want evidence of what they looked like before they do. [Coworker] was going to
27 try but hasn’t made it over there and I can’t get there until Thursday. (I think that’s how the vapor
28 intrusion was getting into our air, through those cracks). EH&S is refusing to test the air until after
they seal them, so if you can take pics, also note or landmark where they’re at [my lockdown]
especially, that’s the hot spot.

- Coworker 1: I’m in the office. If you can point me to where the cracks are I can take a pic.

- Coworker 2: I’m here too.

- Coworker 1: 12-1 no meeting for me, I can help. Do you consider this a crack? (attached photo
of crack in the floor)

1 - Gjovik: OMG thank you. Yes, can you get closer up to see the depth please and note where in
2 the building it is. I love you both. The deeper the crack the more likely we're being slowly
3 poisoned. I'll forward you an email after my meetings.
4 - Coworker 1: I did a quick walk and it is all over the place. I can take pics between meetings but
5 it is everywhere.
6 - Gjovik: UGH GROSS THANK YOU THANK YOU THANK YOU. If there's any way to show
7 depth like sticking clay in a deep one and showing how deep it is that would be amazing. It sounds
8 like they're trying to cover all this up as soon as tomorrow. This is me yelling about the cracks
9 (email attachment). I think they're sealing them tomorrow but refusing to test or capture them
10 otherwise until they fix them.
11 - Coworker 1: Right in front of [lab]. Not deep enough to show depth (photo of cracks). So far, I
12 don't find a crack that is deep enough to show it.
13 - Gjovik: Thank you. Would you mind looking in front of [Coworker 3]'s office and the concrete
14 in front of the row where my desk is. I filed a worker's comp complaint for fainting in [Coworker
15 3]'s office & at my desk in 2019 now due to suspected chemical exposure. EH&S is refusing to
16 check under the carpet... because they're smart & talented people & Ashley needs to stop asking
17 questions."

18
19 143. On August 3 2021, with a meeting with Okpo, Gjovik shares her screen in
20 WebEx and shows him the above messages with Simon & Eddie gathering photos of cracks.
21 Gjovik tells Okpo she won't let Apple cover up issues and destroy evidence. The coworkers help
22 her again the morning of August 4 2021.

23 - Coworker 1: here is what I see in front of [Coworker's] office and your row. Not deep. (two photos of
24 cracks in the floor). EH&S folks are here by the way.
25 - Gjovik: Thank you!!!!
26 - Coworker 1: With so many devices. Nice job.
27 - Gjovik: OMG can you take pics of them too please low key (if you feel comfortable) or even not low
28 key if you want, "smile" "Ashley says hi,"
- Coworker 1: They are in the conf room next to [Director's] office. Very difficult to take pic.
- Gjovik: They're legit hiding.

23 144. The morning of August 4 2021 Gjovik texted Mike a screenshot of her
24 conversation with Simon about the cracked floor and wrote "*Simon said they're hiding [in] the*
25 *conf[erence] room next to Dave's office with a bunch of tools.*" Mike. responded, "*I love how*
26 *you have Simon on a secret spy mission! I can just see him in my mind poking his head up from*
27 *behind a cubicle wall and snapping some discreet photos.*" Gjovik responded: "*I've just been*
28 *sitting over here cackling.*"

1 145. Apple removed Gjovik from the workplace and all workplace interactions on
2 August 4 2021.

3 146. On August 5 2021 Gjovik's team sent a notice about 825 Stewart saying: "Please
4 see the attached map for a caulking project beginning at Stewart 1. This project will start
5 tomorrow at 3pm and continue for the next 4-5 Friday evenings. This will be in the hallway
6 entering the Sim City office area as well as other areas marked on the map. Please make sure
7 there are no confidential items in the office area for the next few weeks on Fridays after 3pm. An
8 update will be sent out when the work is complete."

9 147. On August 19 2021, the US EPA noted in an inspection report: "*Exposed, sealed*
10 *concrete was present throughout much of the buildings.... Significant, visible slab cracks, gaps*
11 *and penetrations had been sealed... Generally, the slab had been sealed, however some large*
12 *test equipment is bolted to the slab and it is unclear if any of these installations penetrate the*
13 *slab.*"

14 148. On October 7 2021 US EPA finalized a report of their August 19 2021 inspection,
15 which noted: "Thank you for organizing for me and [Plate] to conduct the August 19, 2021 site
16 visit of the 825 Stewart Drive building, which is currently leased by Apple, Inc. (Apple). ..
17 During the site visit an Apple leasing manager provided access throughout the building. The
18 purpose of the site visit was for EPA to inspect the following items to assess the potential for
19 vapor intrusion into the building...The sub-slab depressurization (SSD) system that was installed
20 underneath the three connected site buildings that passively vents soil gas vapors to the
21 atmosphere. The previously installed soil gas sampling vapor ports. The locations where past
22 indoor air sampling has been conducted." "... The building's concrete slab and the April 2015
23 cracks that where sealed to prevent potential vapor intrusion The building's concrete slab and
24 penetrations from pipes or seams."

25 149. The October 7 2021 US EPA report also said:

26 "SSD System Vent Pipes: From Matt Plate's visual inspection on the roof, four of the
27 SSDS exhaust vents are approximately 10-feet of the HVAC's intakes vents and lower
28 or at a comparable height to the intakes. This distance is an acceptable building code
distance; however, a distance greater than 10-feet and/or a height that is elevated above
the building ventilation system components need to be considered as the SSD system
may vent low concentrations of site contaminants of concern outside, creating the
potential for contaminates to be pulled into the HVAC intakes and into the building.
This scenario and potential impacts to indoor air quality need to be evaluated and
mitigated and EPA asks NGC to provide a proposal to do so. As the interior SSD

1 system vertical vent pipes cannot be easily moved and rerouting of piping on the roof
2 may compromise the effectiveness of the passive SSD system, consideration needs to
3 be given to extending the height of vent pipes. For vent pipes that cannot be extended
4 (e.g., under the east building chiller), consideration should be given to rerouting the
5 vent pipes away from HVAC intakes and converting the SSD system to an active
6 system with a blower fan.”

7 150. Gjovik’s March 2022 US DOL OSHA complaint noted that prior to her
8 termination, Gjovik had become concerned about and made complaints about Apple: no longer
9 planning to test the air after she asked questions about it; refused to test the air until after the
10 cracks in the floor were fixed; refused to inspect under the carpet during the floor penetration
11 survey “missing” and “compromised” sub-slat vent plugs near her desk; Apple was not
12 informing the US EPA about changes in circumstances at the building; that Black & Brown
13 employees were disproportionally impacted by the chemical exposure. (pg62).

14 151. Around July 20 2022, the US EPA emailed amongst themselves a draft of a letter
15 to send Northrop Grumman in response to Northrop Grumman’s “Response to Comments”
16 (“RTC”) to an US EPA letter sent a couple months prior “requesting sampling at the Apple
17 building.”¹¹³ US EPA complained that Northrop Grumman’s response “misstated the
18 reasons/conditions” and “misinterpreted the requirements to do sub-slab sampling.”¹¹⁴

19 152. Where the Complainant informs a manager that he had contacted EPA officials
20 during a spills conference and confirmed that the Respondent should be reporting certain
21 emissions under CERCLA, the Complainant has engaged in protected activity.¹¹⁵

22 153. Apple did not put much effort into even creating a façade that they were not
23 trying to cover up their negligence with Gjovik’s office. Instead, after Gjovik exposed the
24 likelihood there was ongoing vapor intrusion, Apple then said they were not going to test the air.
25 Gjovik and her coworkers immediately suspected that was Apple attempting to not gather
26 evidence of their own wrongdoing. When Apple disclosed there were cracks in the floor of the
27 office and Gjovik requested they test the air before they fix the cracks because cracks in the floor
28 is how vapor intrusion occurs and she wanted to know which chemical and what levels were
present for “cancer monitoring,” Apple told Gjovik they refused to test the air until after they

¹¹³ US EPA email: July 22 2022, “Letter to TRW – Apple building”

¹¹⁴ Id.

¹¹⁵ *Dodd v. Polysar Latex*, 88-SWD-4 (Sec’y Sept. 22, 1994).

1 fixed the cracks. Gjovik protested that after the fix the cracks, there will be no way to know if
2 vapor intrusion was present and if so, how bad it was. Apple persisted.

3 154. When Gjovik told Apple she planned to visit the office on August 5th to gather
4 evidence, Apple suddenly announced they were sending an EH&S team to her office all day on
5 August 4th (the day before). When Gjovik worked with coworkers at the building on August 3rd
6 to gather photos and details about the cracks in the floor, and notified Apple as such, Apple
7 suddenly suspended Gjovik and removed her from the “workplace” and “all workplace
8 interactions” the morning of August 4th. Gjovik was then left unable to coordinate with her
9 coworkers to gather evidence, or to visit her office as planned to gather evidence in person the
10 next day.

11 155. The day Gjovik was suspended, Apple’s EH&S team was apparently there all day
12 with “lots of tools” per a report from her coworker that morning. Gjovik then saw emails come
13 in steadily while she was on leave about EH&S activities at the building. EH&S send notices
14 they would be on site for long periods of time: Aug 4; Aug 6-Aug 8; Aug 11; Aug 13-15; Aug
15 18-19; Aug 20-22; Aug 27-29; & Sept 3-5. This was terribly unusual and highly suspicious.

16 **vi. Institutional Control: Sub-Slab Monitoring Ports**

17 156. On March 29 2021 Gjovik emailed Apple EH&S (Michael Steiger) and Apple
18 Employee Relations (Jenna Waibel). “I’ve been mapping out the data from the government
19 reports. Between the EPA & Water Boards reports I only see vapor intrusion testing results from
20 2003, 2004, & 2013. The reports mentioned that testing was also done in 2015, but I don’t see
21 any results published for that. I know one of the managers in my team who has [sub-slab] vent
22 SS-3 in his office said he’s had someone come by to measure things at least once over the last
23 few years. Are those results posted anywhere that I can review before we meet please? (2015
24 results, + anything else collected after that).”

25 157. On April 11 2021, Gjovik emailed Steiger and Waibel additional questions,
26 including “First, the 2015 report says the seal for [sub-slab] vent 7 was “compromised” so [sub-
27 slab] vent 2 was used instead (pg 5). Both of those vents are very close to my desk. What does
28 compromised mean? Could vapors be leaking out of it?” “The same paragraph says SS-11 could
not be located. What kind of monitoring is usually done to ensure those Sub Slab vents actually
stay sealed? If you can’t find it, how do you know its ok?”

158. On April 15 2021, Gjovik emailed Josh, the Apple Senior Director: “There are
also practical concerns about this — that I raised with EHS as well. I asked, what happens if

1 someone starts messing with one of the seals on the [sub-slab] vents because they don't know
2 what it is (and in my building, literal Hades is beneath) — and he's like OMG DO NOT LET
3 ANYONE DO THAT. And then I was like, what happens if people start feeling sick and it could
4 be VI and they don't know that's happening and he's like OMG IF YOU SMELL ANYTHING
5 WEIRD CALL US IMMEDIATELY. And I'm like, listen you fools, how is anyone supposed to
6 know to do that if they don't even know it's remediation site. I mentioned that 2018 issue where
7 TCE vapor intrusion flooded a Google building and no one knew it was a release site or even
8 that the VI was occurring until something caught on days later and evacuated them. Google had
9 encouraged any pregnant woman who were exposed to speak with their doctors. (Article here).
Still no good response from EHS.”¹¹⁶

10 159. On April 30 2021, Gjovik emailed the US EPA (Perez-Sullivan), “because none
11 of us know this is a Superfund site — we don't know not to mess with sub slab vent covers, or to
12 not mess with the HVAC, or to report if there's any usual smells etc. I brought this up with him
13 and he'd said he'd back to me a couple weeks ago — but said that the Env Health Safety team
14 does know and does visit the site. I communicated that does not seem sufficient. In fact, with the
15 wildfire smoke last year, we had EHS turn off the HVAC so outdoor air wasn't being brought it
16 — from what I've seen, it doesn't seem like the vapor intrusion mitigation system was ever
17 considered when they did turn it off. I believe it was off for a week or two. I brought this up too -
18 and he hasn't gotten back to me either. I know I've seen people kicking at those SS-V plugs not
19 knowing what they are too... t I'm curious what the EPA's expectations are for responsible
20 parties (and companies they may lease to) to communicate to workers in these buildings about
21 how to monitor for their issues (weird smells, weird health issues, etc.) or how to report trouble
22 or what not to mess with (plugs, HVAC, etc.). Etc.”

23 160. On May 17 2021, Gjovik was texting with her coworker Mike and told him Apple
24 now said they have no ETA for testing. Mike said “*This whole thing is so wishy-washy! Doesn't*
25 *really give us much confidence in the process.*” Gjovik responded: “*Yeah, not feeling super great*
26 *that he said he will no longer answer any of my specific questions. Those were the questions like,*
27 *what does a 'compromised' sub slab vent plug mean? It's right by my desk. He says, not going*
28 *to answer that. What he did say, it looked like he was literally reading a script. I assume Apple*
legal is heavily involved now. Maby they won't test because they don't want to know.” Mike
responded: “*yea, right? If they don't test, they won't fail. 100% of the tests we ran passed.*”

¹¹⁶ Gjovik email to J. Cohen, Date: April 15 2021; Subject: Apple Chemical Exposure, Ethical Concerns

1 161. On July 12 2021 Gjovik texted Mike asking if he will take photos of the cracks in
2 the floor if he visits the office soon. She also said *"If you anything around the sub slat vent*
3 *covers def get pics of those. Those sub slat vents go all the way down."* Mike asked: *"do you*
4 *know where any of the vent covers are?"* Gjovik replied *"Yep!!! They're in the vapor intrusion*
5 *map.. this is what the covers look like (photo of floor in their office)."* Mike said, *"okay will keep*
6 *my eyes open for these."* Gjovik replied with a map she created showing the locations from the
7 US EPA records. She said *"those are the sub sla[b] vents I see in the maps but if you see any*
8 *that look like it, could be more, they don't keep great records... if you do find cracks and they*
9 *look like 'omg' try to get at least one pic to include some sort of landmark to show where its at*
10 *and that its clearly in SD01."* He said *"will do. I'll let you know when I head down there."*

11 162. On the August 19 2021, US EPA inspection report, for the inspection of Gjovik's
12 office, US EPA (Plate) wrote: *"SS-05 under carpet (photo). Identified by Apple. Right S*
13 *diameter, but grout sealed. Seems mislabeled as SS-5 location not shown here in 2016 VI*
14 *rpt...Seal sub slab ports. Not abandoned properly. Rusted. Use brass and SS. Reinstall or*
15 *abandon. Seal and can redrill if needed. Don't need a permanent SS port. SS-4 (photo) not*
16 *poured well. SS-3 (Photo): Cannot locate SS-10 and SS-11. Indoor building layout has had*
17 *changes (?) since 2015. AECOM will look at their records. Destroy the indoor SS ports. Locate*
18 *the indoor SS missing ports."*

19 163. The US EPA's October 7 2021 report on the August 19 2021 inspection noted:
20 *"The historical concrete sub-slab vapor sampling ports, left in place, have not been regularly*
21 *sampled or maintained and several could not be located (SS-10 and SS-11). These ports need to*
22 *be located and maintained where future sub-slab sampling will be conducted, or*
23 *decommissioned if a justification is provided that the ports are no longer needed. EPA also*
24 *requests an updated figure for the building showing all sub-slab vapor sampling port locations*
25 *including measurements from exterior and interior walls, their ID names, and callouts presenting*
26 *historical VOC detections. The figure used to locate the sub-slab ports in the field only showed*
27 *approximate locations."*

28 164. The December 6 2022 US EPA letter to Northrop Grumman ordered: *"Include a*
statement that after data collection and evaluation is completed, reviewed, and approved by
EPA, the sub-slab ports will be decommissioned, upon consultation and approval by EPA."

1 **vii. Institutional Control: Land Use Covenant**

2 165. The 2014 and 2019 Five Year Reports noted the Land Use Covenant was out of
3 date and was not in compliance with California Civil Code 1471 which requires that all deeds
4 and leases include the restrict covenant and that it applies to all owners and occupants.¹¹⁷

5 166. On April 2 2021, Gjovik emailed Steiger and Waibel: “I see there’s a covenant
6 with the government for the property — prohibiting residential use — does that mean employees
7 should never pull all-nighters? It’s been known to happen.” “The land use covenant requires
8 notice to be given to EPA if any damages to remediation systems — or any subsurface
9 disturbance. How are employees supposed to follow this if there’s no notice it’s a remediation
10 site?” “Pg 28 of the 2014 FYR mentions the current land use covenant is not in compliance with
11 modern California legislation and needs to be revised. Was it revised? I don’t see a new one still.
Does CA Civil Code § 1471 add any new requirements on the property not current reflected?”

12 167. On April 2 2021, in a meeting with Gjovik, Steiger, and Waibel, Apple said
13 compliance with the Land Use Covenant was: “*Not employee's responsibility — would be EHS
14 & Construction Mgmt. Austin is on-site and keeps an eye on it.*”

15 168. Around April 3 2021, Gjovik was texting coworker Mike about the office. Mike
16 texted: “What’s crazy is that on the Geotracker they say no day care, no elder care, no
17 residential, etc. So, it’s fine and dandy for everyone to get slowly poisoned?” Gjovik responded,
18 “I was thinking about that a lot... there’s no warnings about any of these prohibitions. I wonder
19 how many people have done overnights in the office... I also wonder if Jeremy’s barbeque in
20 the back is actually allowed.” ME responded “Yes, these are all good questions... So glad you
are digging into this stuff for all of us.”

21 169. On May 17 2021, during a meeting with Gjovik, Steiger, and Waibel, Apple now
22 said about the land use restrictions: “*Questions about land use restrictions are questions for the
23 EPA.*”

24 170. Order: 91-103 instructs that “The discharger shall maintain in good working
25 order, and operate, as efficiently as possible, any facility or control system installed to achieve
26 compliance with the requirements of this order.” (pg27). Further, it orders, the storage, handling,
27

28 ¹¹⁷ CCC §1471(b) “the covenant shall be binding upon each successive owner, during his or her
ownership, of any portion of the land affected thereby and upon each person having any interest therein
derived through any owner thereof.”

1 treatment or disposal of soil or groundwater containing pollutants shall not create a nuisance.
2 (pg20).¹¹⁸

3 171. The Land Use Covenant applies to “Occupants” which includes tenants
4 (leasehold), and that the lease requires the tenant to comply with the Covenant. It includes:
5 “Covenantor covenants that the Restrictions shall be contained in each and all deeds and leases
6 of any portion of the Property.” The Covenant warns: “violation of the Covenant shall be
7 grounds for the Regional Board to file civil land criminal actions.” The agreement runs with the
8 land and runs in perpetuity.

9 172. Gjovik’s March 2022 US DOL OSHA complaint noted that “Through April,
10 Gjovik persistently expressed her initial concerns about her office including but not limited to:
11 That employee use of the building appears to be in violation of the land use covenant; The land
12 use covenant appears to be out of compliance with the law; That Right to Know should require
13 Apple to disclose to all employees the CERCLA status of the site.” (pg61).

14 **viii. SARA/EPCRA: Right to Know**

15 173. Gjovik informed her coworkers about the site on March 17 2021. Hours after
16 Gjovik replied, Eddie, a manager on Gjovik’s team, contacted Gjovik and thanked her for
17 informing him and expressed his own concerns about exposure. Eddie also shared an article with
18 Gjovik about fraudulent actions by Northrop Grumman related to another chemical plume.
19 Linking: <https://projects.newsday.com/long-island/plume-grumman-navy/>

20 174. On March 30 2021, Gjovik emailed two leaders at the California Department of
21 Public Health (Dr. Prudhomme and Ms. Barreau) and wrote:

22 “Technical question for both of you.... So, my employer doesn’t allow us to talk
23 about the locations of our office buildings — but something has been eating at me.
24 I’ve worked on an EPA Superfund site since January of 2017. I knew that vaguely
25 it was a “bad one” but didn’t start really looking into it until a couple weeks ago. If
26 I get in trouble for asking you about this... I’m going to argue I’m seeking the
27 advice of the state’s best medical and scientific experts related to chemical exposure
28 at remediation sites — about concerns I have about my personal health and
29 safety.... ‘Cause I am. I work on the TRW Microwave site, part of the “Tripe Site,”
30 in Sunnyvale. It was overseen by the Water Boards until the Superfund program
31 took it over in 2014 after major vapor intrusion issues in the area, as well as on the
32 site my office is on.”

33 ¹¹⁸ Site Cleanup Requirements and Recission of Order No 89-057 for TRW Inc, FEI Microwave Inc, and
34 Tech Facility 1 Inc

1
2 175. On April 2 2021, Gjovik emailed Steiger and Waibel: “Shouldn’t employees be
3 notified this is a remediation site? Ideally informed consent for working there. At the very least
4 Right to Know should require some sort to disclosure?” “Pg 32 of the 2014 FYR mentions
5 there’s excess cancer risk for occupants due to vapor intrusion, and also plumbing/steam
6 pathways (like the locker room showers). Shouldn’t employees be notified about this? Prop 65 at
7 least?” Gjovik’s meeting notes summarized that Apple responded: “Apple decided no legal
8 requirement [to inform employees]. Larger question for Apple on ethical/moral obligation.” And
9 “No Prop 65 requirements per internal review.”

10 176. On April 2 2021, Gjovik wrote to Apple: “Would you be willing to at least email
11 or present at a staff meeting — to disclose the MSQ SCV management team (My boss: David
12 Powers’ org) on the history & current conditions of the property & building?.” Apple said: “One
13 other person expressed concern as well. Larger message may be possible but need to talk to
14 legal.”

15 177. On April 30 2021, Gjovik emailed the US EPA (Perez-Sullivan), “Next, from
16 what Apple has told me, they said they decided internally that they have no legal obligation to
17 have to inform employees about the status of these buildings related to chemicals in the soil or
18 groundwater, or Superfund status, etc. I pressed further if there’s an ethical obligation and they
19 said that would be a “bigger conversation.” It sounds like they think they only have to inform
20 employees if there’s a concrete and immediate risk to employee health (which I argued... how
21 would they know that if they’re not testing? ... no answer). I’m also feeling pressure to not talk
22 to co-workers about any of this answer). I’m also feeling pressure to not talk to co-workers about
23 any of this either (from my direct manager and our employee relations teams): I am curious
24 what the EPA’s expectations are for responsible parties related to informing workers in these
25 buildings about the chemicals, the gov status, etc. Maybe this is more OSHA & “Right to Know”
26 — but any guidance you can provide here would be helpful. Also anything about workers rights
27 to be able to talk about these sites. I would also appreciate any guidance you have about learning
28 more about possible chemical exposure from this site from an unbiased party. I talked to Dr.
Robert Harrison about it yesterday for a bit, but he says we don’t have enough data because no
one was testing while I was there. I was also going to see if [Ms.] Barreau and Dr. Prudhomme
would take a look informally. Let me know if you know of anyone else who might have
thoughts.”

1 178. On May 4 2021, Gjovik emailed the US EPA (Perez-Sullivan), “I don’t have
2 anything in the pipeline publishing wise about the TRW Microwave site — though I am
3 speaking with several other agencies about it — in addition to talking with Apple directly. As
4 mentioned, as of my last conversation with Apple Employee Relations, I’m unsure if I can
5 actually talk about the site at work without getting in trouble for doing so — let alone publishing
6 anything.”

7 179. On June 7 2021, US EPA (Perez-Sullivan) wrote to Gjovik: “EPA is not aware of
8 any regulation or limitation to workers or the public to talk about a Superfund site. EPA supports
9 transparency and providing information to the public, other than were prevented by regulation,
10 guidance, or to protect personally identifiable or confidential business information. There is no
11 specific right-to-know requirement in the TRW Microwave Record of Decision, which
12 documents the remedy selected for the Site. For a site where conditions are protective of human
13 health there is no specific EPA requirement to notify each site visitor or construction or office
14 worker of a mitigated potential risk. However, EPA does conduct regular community outreach
15 and provides further transparency to the public through websites, fact sheets, and responses to
16 public inquiries. Note that different sites may have different public notification needs or
17 requirements.”

18 180. On July 7 2021, Gjovik emailed US EPA (Perz-Sullivan) and wrote I would
19 appreciate a quicker response this time if possible. After I reminded Apple of labor laws & stuff,
20 they clarified they’d “never prohibit me from speaking out about workplace safety concerns,”
21 and as such I am now actively looking into publishing something about this. Apple EH&S
22 reached out with the environmental engineer leaving and are “providing me an update” later this
23 afternoon. I’ll let you know if there’s anything else they say I think you’ll care about — or
24 which raise questions for the EPA.”

25 181. On July 19 2021, Gjovik emailed US EPA (Perez-Sullivan) and said: “*Hi Margot,*
26 *Checking in — any update? I’m locking this down with a national journalist.*” On July 20 2021,
27 Gjovik emailed US EPA (Perez-Sullivan) and said: “*If the journalist wants to talk to someone at*
28 *the EPA about all this, who should I have them reach out to? It’s a very big publisher, so I*
assume they will want to chat. You?” On July 22 2021, US EPA (Perez-Sullivan) emailed
Gjovik and said: “*Hi Ashley, I’m meeting with the site team next week, regarding the reporter*
you’re working with I’m the right person to work with. Thanks so much for your patience – we
will be touch!” On July 23 2021, Gjovik texted her coworker Mike: “*FYI sounds like the EPA is*

1 finally yielding to my screams and is meeting with Apple to figure out what the f is going on in
2 our office building.” (attached the email with Perez-Sullivan). Mike responded: “Oh wow!
3 That’s awesome. It’s happening!”

4 182. Operating a business on a Superfund mega-site with a pathway for vapor
5 intrusion, and vapor intrusion contaminants of concern including TCE and/or Vinyl Chloride, is
6 an ultrahazardous activity. The activity has a high degree of risk of some harm to people, land,
7 and chattels; a likelihood that the harm will be severe; there is an inability to eliminate the risk
8 by the exercise of reasonable care; the activity is not a matter of common usage; the activities
9 were inappropriate for the locations where they were carried on.¹¹⁹ Recovery for unexpected
10 exposure to toxic fumes in an office building or other building has been recognized as a
11 legitimate legal claim, even where the effects upon the building occupants are not permanent.¹²⁰

12 183. The status of a property as a Superfund site has been a factor in deciding if an
13 activity is ultrahazardous.¹²¹ The ‘storage’ of hazardous waste in open pits is a ultrahazardous
14 activity.¹²² Courts have found that “mercury and other toxic wastes are ‘abnormally dangerous,’
15 and the disposal of them past or present, is an abnormally dangerous activity.”¹²³ There have
16 been similar findings for processing and disposal of radium, especially when processed and
17 disposed of in an urban area, which was described as “particularly inappropriate.”¹²⁴

18 **B. 3250 SCOTT BLVD (RCRA SITE)**

19 184. This section details Gjovik’s complaints about the ambient air and air emissions
20 around 3250 Scott Blvd, complaints that Apple knew about, and Apple retaliated against Gjovik
21 because of Gjovik’s complaints. This section then also summarizes actions taken by regulators
22 after Gjovik was fired where it bolsters Gjovik’s claims or documents a basis for Apple to be
23 motivated to retaliate against Gjovik. This group of claims is slightly unusual as Gjovik did not
24 know Apple was responsible for the environmental violations at the time she made her protected

25 ¹¹⁹ Restatement of Torts Second, section 519-520.

26 ¹²⁰ *Butler v. Helmsley-Spear Inc.*, 198 A.D.2d 131, 131–32, 604 N.Y.S.2d 51, 52 (1993); 91 Am. Jur.
27 Trials 1 (Originally published in 2004).

28 ¹²¹ *T E Industries v. Safety Light Corp.*, 123 N.J. 371, 394 (N.J. 1991) (“Plaintiff’s property is befouled
with radium because of defendant’s abnormally-dangerous activity. Radiation levels at the site exceed
those permitted under governmental health regulations. Moreover, the property has been earmarked as a
Superfund site.”)

¹²² *Updike v. Browning-Ferris, Inc.*, 808 F. Supp. 538, 544 (W.D. La. 1992)

¹²³ *State, Dept. of Environ. Protect. v. Ventron Corp.*, 94 N.J. 473, 468 A.2d 150 (N.J. 1983); *T E
Industries v. Safety Light Corp.*, 123 N.J. 371, 391 (N.J. 1991).

¹²⁴ *T E Industries v. Safety Light Corp.*, 123 N.J. 371, 394 (N.J. 1991)

1 complaints, however she did make protected complaints, Apple knew she made those complaints
2 and the complaints were actually about Apple, and Apple retaliated against Gjovik for Gjovik's
3 complaints, including concealing their misconduct for nearly three years.

4 185. On February 21 2023, Gjovik discovered the semiconductor fabrication activities
5 at 3250 Scott Blvd in Santa Clara, next to the apartment where she got sick. Gjovik posted on
6 Twitter in real time as she learned about it. Gjovik added that day, *"I've been making muffled*
7 *screaming noises for about twenty-five minutes now. WTF IS WRONG WITH THEM. THEY*
8 *MUST HAVE KNOWN THEY DID THAT SHIT TO ME!!! No wonder they gave me that*
9 *"extreme condition leave" to move out. Apple is the extreme condition."*¹²⁵

10 186. In late 2015, Apple started stealth semiconductor ("silicon") fabrication activities
11 in a facility located at 3250 Scott Boulevard Santa Clara California. Apple was cited for
12 building, environmental, health/safety, and fire code violations at 3250 Scott Blvd in at least
13 2015 (stop work order due to construction without permits), 2016 (spill of cooling water, fire
14 code and CalASPA violations, health & safety code violations), 2019 (phosphine/silane spill,
15 wastewater testing violations), 2020 (fire code violations, using 2 EPA IDs, inaccurate hazmat
16 inventory data, no spill plans or training, no business permit, no signature from supervisor on
17 records), and 2021 (another phosphine leak).

18 187. Per California Air Resources Board records, 3255 Scott was registered for air
19 emissions in June 11 2015 as "Research and Development Facility." However they did not
20 report any emissions. In 2019, Apple submitted a permit for "modification/throughput increase
21 & abatement" but it was denied for "incomplete data" a couple weeks later. On April 14 2023,
22 Apple submitted a "Permit Modification – SB01" which was permitted as a "Semiconductor and
23 Related Device Manufacturing" facility on May 1 2023, but which was still under evaluation.
24 Apple's application said the only "toxic pollutant" sources they plan to emit are "isopropyl
25 alcohol" at 15.69 lbs/day and diesel engine exhaust at 0.01 lb/day. Apple did not note the point
26 sources – for example back in the late 1990s and early 2000s, the same facility has multiple
27 permits for emission sources such as "abatement device," "fume scrubber," "carbon
28 absorber/incinerator," "wafer ab," etc. Despite the lack of point sources and named chemicals,
Apple's filing suggested they expect average emissions in pounds per day of 16.07 of Organic
Compounds.

¹²⁵ Twitter, 2/21/23, Ashley Gjovik, <https://twitter.com/ashleygjovik/status/1628250591779516416>

188. Around summer of 2021, Apple reported to the US EPA that in the year 2020 they released 7.8 tons (15,608 pounds) of volatile organic chemicals and 260 pounds of the now-banned combustible solvent N-Methyl-2-pyrrolidone (NMP) into the exterior air from the 3250 Scott Blvd factory.¹²⁶ Gjovik’s apartment at 3255 Scott Blvd was only a few hundred feet from the exhaust vents at 3250 Scott Blvd. Apple reported that in 2021, they sent 1,599 tons of hazardous waste to disposal facilities from corporate facilities globally. Based on manifests, 512 tons of that global waste (32%) came from the facility at 3250 Scott Blvd. Apple noted on the amount of waste they “diverted from landfills” and highlighted this number in the report under program they called “Zero Waste” saying they are moving towards “*waste-free operations*”. Meanwhile, at least at 3250 Scott Blvd, the way Apple was ‘diverting’ waste was blasting solvent fumes and toxic gases out their exhaust vents and into apartment windows.¹²⁷

189. The factory at 3250 Scott Blvd vented its exhaust of solvents vapors and toxic gases less than 300 feet from a large apartment complex (1,800+ units) owned and managed by The Irvine Company.¹²⁸ The apartment complex (“Santa Clara Square Apartments”) has multiple street addresses, as well as embedded commercial/retail units, so for simplicity it will be referred to in this complaint with the prior address for the parcel (“3255 Scott Blvd”). In 2015, the Irvine Company was finalizing the Environmental Impact Report (“EIR”) for the 3255 Scott Blvd property across the street from Apple’s plant and starting development of a large apartment complex (where Gjovik would live in 2020). Apple’s factory at 3250 Scott Blvd was never mentioned in the 3255 Scott Blvd EIR despite being located less than 300 feet away (making the apartments a “*fence line community*”)

¹²⁶ US EPA, Federal Register, Document 2022-27438, Vol. 87, No. 242, December 19, 2022, (“EPA determined that NMP, as a whole chemical substance, presents an unreasonable risk of injury to health when evaluated under its conditions of use.”); US EPA TRI report, 3250 Scott Blvd, 2020: https://enviro.epa.gov/enviro/tri_formr_v2.fac_list?rptyear=2020&facopt=dcn&fvalue=1320219310885&fac_search=fac_beginning ; US EPA Air Pollutant Report, 3250 Scott Blvd, 2020, <https://echo.epa.gov/air-pollutant-report?fid=110001168254>

¹²⁷ Apple, 2022 Environmental Progress Report, https://www.apple.com/environment/pdf/Apple_Environmental_Progress_Report_2022.pdf

¹²⁸ The Irvine Company, *Santa Clara Square*, [last visited 12/12/23], <https://www.irvinecompanyapartments.com/locations/northern-california/santa-clara/santa-clara-square.html>

1 **i. CAA: Ambient Air Pollution; Releases and Emissions**

2 190. The U.S. Department of Health & Human Services, Chemical Hazards
3 Emergency Medical Management Quick Response Guide advises how to recognize a chemical
4 HAZMAT incident through event-related, environment-related, and victim-related cues.¹²⁹ The
5 page notes that an observer should have high confidence of a HAZMAT incident if they confirm
6 one or more of certain cues including: an unexplained plume or cloud; colored plume or cloud;
7 unexplained odors; nearby chemical-related facility; low-lying fog not explained by weather;
8 unexplained liquid puddle; oily sheens or droplets on surface; shared medical symptoms by
9 multiple victims; difficulty breathing; burns or irritation on the skin; disorientation.¹³⁰

10 191. Apple has conducted their business in such a manner as to constitute a nuisance
11 in that their silicon fabrication plant emits large quantities of vapors, dust, chemicals, and other
12 contaminants into the air, which are carried by the natural winds and air currents onto Gjovik's
13 property, and collect Gjovik's chattel property, and are generally injurious to Gjovik's health,
14 are offensive to the senses, and interfered with Gjovik's comfortable enjoyment of life and
15 property. Apple created the nuisance as the result of unnecessary, unreasonable, and injurious
16 methods of operation of their business.

17 192. Chemical waste disposal sites and sewerage treatments plants are often found to
18 be nuisances.¹³¹ There are many nuisances cases related to hazardous waste and chemical
19 pollution.¹³² Further, California Health & Safety Code § 5411 expressly prohibits the discharge
20 of waste in a way "which will result in contamination, pollution, or nuisance."¹³³ Similarly, a

21 ¹²⁹ US H&HS, Chemical Hazards Emergency, *Quick Response Guide*,
22 <https://chemm.hhs.gov/quickresponseguide.htm>

23 ¹³⁰ US H&HS, Chemical Hazards Emergency, *Quick Response Guide*,
24 <https://chemm.hhs.gov/quickresponseguide.htm>

25 ¹³¹ *Village of Wilsonville v. SCA Services, Inc.* 86 Ill.2d 1 (1981); *Varjabedian v. City of Madera*
26 (1977) 20 C3d 285, 293-294, 142 CR 429, 435; (Against a sewage treatment plant for interference caused
27 by noxious odors.)

28 ¹³² See, e.g., *Shamsian v. Atlantic Richfield Co.* (2003) 107 CA4th 967, 979, 132 CR2d 635, 644 (leaking
underground petroleum tanks); *KFC Western, Inc. v. Meghrig* (1994) 23 CA4th 1167, 1182, 28 CR2d
676, 685 (same); *Newhall Land & Farming Co. v. Sup.Ct. (Mobil Oil Corp.)* (1993) 19 CA4th 334, 341-
345, 23 CR2d 377, 381-383 (soil contamination resulting from former landowners' operation of natural
gas processing plant); *Team Enterprises, LLC v. Western Investment Real Estate Trust* (9th Cir. 2011) 647
F3d 901, 912; *Branch v. Western Petroleum*, 657 P.2d 267 (Utah 1982) (nuisance per se for violation
state statute in hazardous waste case).

¹³³ California Code, Health and Safety Code - HSC § 5411 ("No person shall discharge sewage
or other waste, or the effluent of treated sewage or other waste, in any manner which will result
in contamination, pollution or a nuisance.")

1 chemical HAZMAT incident is an imminent or actual release of a chemically harmful substance
2 into the environment at levels that require urgent response to contain the release and protect
3 humans and the environment.¹³⁴

4 193. On September 2-3 2020, Gjovik emailed West, Powers, and friends in Apple
5 Legal, to their Apple work emails, sharing what she discovered in the air. *"I woke up at 3am*
6 *last night feeling terrible and having trouble breathing and today I looked back & saw the air*
7 *spike into the "can't even graph this poison" tVOC territory at 3am. I've had a lot of these*
8 *middle of the night, wake up choking/sick incidents since I moved in. I wonder how many of them*
9 *overlapped with these poison spike. Some of the spikes are so high, the monitor can't even*
10 *report it (goes beyond "very polluted" which itself looks to be defined as toxic gas levels often*
11 *found in laboratories with industrial chemicals)."*

12 194. On September 2 2020, West replied to Gjovik, with Powers' cc'd saying: *"If you*
13 *suspect its the air in your apartment. Get out of there right away - even if it means going to a*
14 *hotel. Your health is more important and it's really hard to prove anything."* West said a friend
15 of his who works in corporate EH&S says *"he's spent hundreds of thousands of dollars doing*
16 *stuff at company sites and he still isn't convinced it did much.... His position is that if you run*
17 *the tests and it's bad, they probably won't be able to fix it So you'd end up moving anyway."*

18 195. On September 9 2020, Gjovik had her doctor order panels of blood and urine tests
19 looking for chemical exposure. Gjovik went in first thing in the morning, after a bad night with
20 multiple exposures, and when she had the blood draw, the nurse said it was the most blood
21 they've ever drawn in one sitting – and in fact the tray holding all the blood vials became too
22 heavy on one side and crashed onto the floor, spilling dozens of vials of Gjovik's blood
23 everywhere. As the tray fell, it also pulled the needle out of Gjovik's arm, and leaving blood
24 spitting out of her arm like a horror movie. There was evidence of at least Xylenes and Toluene
25 in her urine and Arsine gas in her blood.

26 196. On September 8 2020, Gjovik emailed safety@apple.com asking for advice and
27 sharing an "official complaint" she "just submitted to the Santa Clara County Hazardous Material
28 Program." She wrote:

29 "I have reason to believe my apartment complex and the property it is on is
30 exposing me to harmful levels of volatile organic chemicals. I live at the Santa
31 Clara Square Apartments, which apparently has enormous amounts of hazardous

134 US H&HS, Chemical Hazards Emergency, *Quick Response Guide*,
<https://chemm.hhs.gov/quickresponseguide.htm>

1 waste on site. I've been struggling with massive health issues this year. They were
2 mostly mild before I moved in, but they got extremely worse after I got here.... I
3 ended up seeing 20+ specialists trying to figure out what was making me so sick
4 (severe dizzy spells, arrhythmia, angina, rash, MS-like neurological symptoms,
5 volatile blood pressure, bradycardia, exhaustion, etc.) I started becoming
6 suspicious of toxins/poisoning only a couple weeks ago... when I checked my
7 Blue Air filter monitors I saw huge waves of tVOCS fuming up my apartment at
8 the times I was hallucinating... when I checked my Blue Air filter monitors I saw
9 huge waves of tVOCS fuming up my apartment at the times I was hallucinating...
10 I've purchased three separate personal tVOC monitors and they're all showing
11 unhealthy numbers, usually at the same time, often at least once a day. The fumes
12 seem to come in the worst around 7am-8am and 10pm-11pm. Sometimes it's
13 quick, and sometimes they blast me for multiple hours.... When they the fumes
14 are blasting, I can feel it before I see it. My skin burns, my lungs burn, I feel
15 exhausted, like I'm choking. The rash on my arms gets really itchy. There's a
16 chemical smell, kind of sweet sometimes...”

17 The same day she also sent an email with a copy to Charlene, an Environmental Director at
18 Apple who reported to Bertolus, via their Apple emails.

19 197. On September 9 2020, Gjovik’s friend Josh, an Apple Senior Director, responded
20 to her update saying it was “HORRIBLE” and asked if she has found a toxicologist yet. Josh
21 attempted to connect Gjovik to several doctors, as well as law school clinics to help Gjovik.
22 Gjovik responded on September 9 2020 saying, “2020 has officially reached into the realm of
23 literal nightmares...Just got off the phone with the Santa Clara Dept of Health, while basking in
24 the light of a blood red apocalypse sun. [Note: wildfires]. They were like what WTF is going on
25 with that property, call our hazmat team ASAP. I got a referral to the UCSF Occupational &
26 Environmental health group and left a voicemail with one of their doctors. That seems to be the
27 only hope for blood tests. I was also going to try Apple’s Env Health group too, to see if they
28 knew of anyone. In the meantime, lots of phone calls with the gov & attorneys.” This was sent
between their Apple email accounts.

198. On Sept 9 2020, Gjovik wrote to safety@apple.com and Tracey Scott, “Update - I
was able to get the tests ordered. But - actually, someone over there might even be familiar with
this specific area. Looks like there was an Apple building right in the path of the Superfund
site’s groundwater, and between it and my building for a bit. It was registered with the EPA for
Toxic Releases (TRI). Would just appreciate any general, informal advice on how to navigate
this — or tips if there’s anything Apple can do to help me get out of this horrific place.”¹³⁵

¹³⁵ Email from Gjovik to Scott; Date 9/9/2020; Subject: Re: Questions about suspected long-term exposure to CAL HAZ hazardous materials (Santa Clara)

1 199. On September 13 2020 Gjovik emailed Elizabeth Schmidt at Apple about her
2 home next to 3250 Scott Blvd. *“Thanks again for the call on Wednesday. I did talk to HR and*
3 *Benefits, and they said sadly there wasn’t anything they could do. Even though extreme*
4 *conditions services help with a lot of disaster scenarios, no one considered hazardous waste.*
5 *They did say EAP might have some resources — and they’re helping me look for my next*
6 *apartment and helping get me additional legal consultations. Thank you for the idea though —*
7 *that was clever.”*¹³⁶

8 200. On September 13 2020, Gjovik emailed Powers and West that her landlord
9 suddenly and inexplicitly offered to let her break her lease and move out. Gjovik wrote she
10 wondered if it has something to do with *“the building security guard”* reporting her *“after he*
11 *found [her] in the middle of the night taking photos of utility lines and measuring the tVOCs*
12 *around the building.”*

13 201. In late September 2020, Gjovik hired an industrial hygienist to test the indoor air
14 at her apartment and it returned results showing a number of the chemicals in use by Apple at
15 3250 Scott Blvd including: Acetone, Acetonitrile, Acetaldehyde, Benzene, 1,2-Dichloroethane,
16 Ethanol, Ethylbenzene, Hexane, Isopropanol, Isopropyl toluene, Methylene Chloride, Toluene,
17 1,2,4-TMB, Xylene. However, the TO-17 test only returned chemicals for ½ of the total VOCs it
18 accounted for. The testing panel did not test for NMP, Arsine, Phosphine, Silane, or Chlorine –
19 and these may have also been present.

20 202. Gjovik moved to San Francisco on September 25 2020 (only 15 days after
21 discovering the chemicals). Gjovik returned her keys on October 8 2020, keeping them for a
22 couple weeks in case she had an opportunity to do more testing.

23 203. On October 2 2020, Dr. Harrison at the USCF Occupation Exposure clinic wrote
24 to Gjovik: *“These multiple measurements are your improvement once you moved – sure do*
25 *point to the effects of VOCs. So glad you feel better.”*

26 204. On October 6 2020, Gjovik emailed CalEPA about yellow stains on her clothes
27 from the air at her apartment next to 3250 Scott Blvd. DTSC said, *“That is very odd. I’m not*
28 *sure what could be causing that. I’m curious to hear if Dr. Prudhomme has any ideas.”* Gjovik
sent to Dr. Prudhomme (a Public Health Medical Officer III, in the DPH Environmental Health
Investigations Branch of the California Department of Public Health) who responded: *“I found*
these references, which are old, but read the parts about environmental pollutants. This is a

¹³⁶ Email from Gjovik to Schmidt; Date: 9/13/20; Subj: *Haz Waste Question - “Failed Sidewall”*

1 probable mechanism. (links) A lot of what's discussed is dyes reacting via a photochemical
2 reaction with 'normal' air pollutants, like those that the EPA regulates as part of their Criteria
3 Air Pollutants (like NOx, SO2, ozone, etc.). This makes sense as we have all had yellowing of
4 fabrics over time, but yours is accelerated. Will be interesting to see what the IH assessment
5 shows." Gjovik then emailed Josh about this via their Apple emails.

6 205. On October 8 2020, Gjovik emailed as many employees as she could at the
7 apartment complex saying she dropped her keys off but also warning them about the unknown
8 chemical exposure that caused severe injury. She said: "I'm not sure what Irvine's told you
9 about the property, but I continue to worry not just about my own health & safety (with long-
10 term effects from exposure), but also the health & safety of my neighbors in the Santa Clara
11 Square Apartments — and also you folks who are also on the property and could be exposed
12So hopefully this email goes to all of resident and leasing services individuals and can't be
13 moved out of a shared box. I hope YOU ALL can do your own research and make your own
14 informed decisions, and ultimately stay as safe and healthy as you can."

15 206. On October 21 2020 Gjovik emailed US EPA R9 again (Ty) and wrote: "I'm
16 terribly worried about my neighbors and the employees at this apartment complex. I now live in
17 SF and am feeling SO MUCH BETTER. A medical officer with the state unofficially told me
18 that everything I went through since moving into that apartment and until I moved out sounds
19 exactly like acute exposure =o solvents. She said solvent exposure would explain all of my
20 bizarre medical issues."

21 207. On October 26 2020, Gjovik emailed a friend who is a Senior Director in Apple
22 Legal (Joyce), via their Apple email accounts, and updated her on what Gjovik learned about
23 3255 Scott Blvd. "Come to find out the new apartment I moved into in February this year was
24 just built (poorly) on a mountain of hazardous waste. The government, doctors, and lawyers are
25 all investigating —but seems like a given at this point that the hazardous waste remediation
26 failed and I was getting vapor intrusion pouring into my apartment from all the decades of
27 yummy Scott Blvd industrial chemicals buried under the building. I've had two doctors that
28 specialize in haz waste exposure say all of my symptoms sound just like an acute response =o
solvent exposure. Which says a lot that I still finished my classes that term even though I was
apparently sniffing glue all day...Figured it out first week of Sept and got out ASAP. Been
working with a bunch of government agencies —even the Federal EPA is involved now."

1 208. Joyce responded on October 27 2020, emailing: “OMG. But I am so glad
2 they/you figured this out and that you’ve moved to a new place in SF. Amazing views!!! and
3 good clean air.” Gjovik had previously asked if Joyce knew anyone in environmental law that
4 she could talk to and learn more about the field. Joyce then responded she asked around and
5 found someone at Apple and would introduce her. Joyce then connected Gjovik to Debra
6 Rubenstein.

7 209. US EPA R9 CERCLA (Diemer) checked in with Gjovik several times to see if
8 there were any updates from CalEPA or other agencies, emailing Gjovik on October 27 2020,
9 November 19 2020, and more. Each time Gjovik provided an update if she had one.

10 210. On January 21 2021 the US EPA Environmental Justice team contacted Gjovik:
11 “My name is [Hernandez], and cc ’ed here is [Bacock]. We are both the Program Coordinators
12 for the USEPA EJ Program here in Region 9. We’ve recently been made aware of the issue you
13 have brought to the agency’s attention. We understand you’ve been in contact with [Diemer], but
14 we would like to offer you the opportunity to meet with us to discuss the issue directly. We did
15 have a chance to get some background from [Diemer], and while we agree with her
16 recommendations and course of action we are still interested in hearing from you to learn more.”
17 Gjovik responded and met with them to discuss what happened to her.

18 211. On February 8 2021, Gjovik emailed the Santa Clara Mayor and Vice Mayor:
19 “I’m reaching out to you with concerns about a large-scale residential development
20 project Santa Clara city approved in 2015. I moved into the new apartments in
21 2020 and within a week was the in the ER. None of my doctors could figure out
22 what was causing the neurological and cardiac issues. I thought I could be dying
23 — quick onset M.S. or other often fatal neurological conditions, etc. I ended up on
24 state disability & medical leave for nearly six months. We figured out what
25 happened in September. We discovered my apartment was full of very high levels
26 of VOCs (solvent fumes) and then when researching the property discovered it
27 was a hazardous waste remediation site. I’ve had all three of the go-to chemical
28 exposure doctors in this area (and even the gov agency in charge) confirm I was
poisoned by solvent fumes. I moved out and was fine within a week, other than a
threat of future cancer.... So... there’s an active public health issue affected maybe
2,000 people or maybe 5k+ if you count the next door Whole Foods and
restaurants) (or maybe even 10k+ if you count the next-door tech office buildings
before shelter in place) and no one will do a thing about it (other than me
continuing to complain to the state gov on = daily/weekly basis). I’m hoping you
might help Raj, the development is in your district. I’m sure you’ve figured out
which one it is by now — and why this has been such an uphill battle. I also left
voicemails with your assistants, but though I’d send an email follow up as well.”

212. On March 10 2021, Dr. Prudhomme, now the Asst. Deputy Director for
Environmental and Occupational Health for the California Center for Public Health wrote to

1 Gjovik's iCloud email address. The two had been corresponding about Gjovik's medical issues
2 in 2020 and what she discovered about chemicals at her apartment. Gjovik shared a draft of the
3 article she would publish in SF Bay View about her experience. Dr. Prudhomme wrote:

4 "Your story is so compelling and you hit on so many important aspects of
5 the many facets of these hazardous waste sites and what appears to be failures
6 from all sides and yes, money seemingly at the root of it all.... I love what
7 you are trying to do and it takes tenacity to fight the big guys. Continuing to
8 bring awareness to impacted communities is noble and will hopefully
9 improve the lives of many. Thank you for sharing this story and all your hard
10 work."

11 The emails were sent with Gjovik's Apple work iPhone and saved in iCloud backups.

12 213. After the initial responses, CalEPA DTSC became very unhelpful, and all other
13 agencies said DTSC had primary jurisdiction on Gjovik's concerns. DTSC claimed they had no
14 reason to think Gjovik's chemical exposure was from the Superfund or Brownfield
15 contamination, and then everyone gave up on investigating further beyond vaguely claiming it
16 could be something related to the building.

17 214. On March 16 2021, Gjovik emailed DTSC again, "So, y'all agreed with my
18 doctors that it was VOC exposure that caused my health issues, but because you didn't think
19 it's the soil/groundwater, instead you kept saying it was something inside the building causing
20 the VOC exposure (building materials or industrial cleaners). However, Irvine Company
21 currently has a LEED Gold certification for the complex. In their pitch to the city, they also
22 promoted no/low VOC paints, coatings, caulks, sealants, and construction adhesives."

23 215. On March 18 2021 Gjovik emailed US EPA, forwarding her bickering with
24 DTSC, and wrote: "I finally got a call back from the city of Santa Clara and I meet with the
25 mayor in a few weeks. I also reached out to the state and federal representatives for the site and
26 I meet with the first one, the state Assembly Member, tomorrow. Thanks again for setting me
27 up with your EJ folks. They were really wonderful — but unfortunately there was nothing they
28 could do to help. I'm not letting this go. I really want to improve =his overall situation, as well
as ensure the health and safety of my previous neighbors."

216. Gjovik's "*I thought I was dying: My apartment was built on toxic waste*," article
was published in SF Bay View on March 26 2021.

217. On April 6 2021, Gjovik had a phone call with the Bay Area Air Quality
Management District about the ambient air around 3250 Scott Blvd. The department told Gjovik
that CalEPA DTSC had notified their agency that Gjovik made an allegation that "lots of people

1 are getting sick at an apartment.” They apparently provided him the old address which doesn’t
2 have a building anymore (3255 Scott Blvd). Once Gjovik explained what was going on, the
3 investigator told her he would drive to the site that day to inspect, and he did, though it was
4 referred back to DTSC due to lack of data.

5 218. On April 6 2021, Gjovik emailed Josh via their Apple email accounts saying, “*Up*
6 *to six sick people now. (including me). Three other women had my symptoms. CA DTSC is still*
7 *not doing anything about it...This is insane.*” Josh replied: “*Incredible.*”

8 219. On April 8 2021, Gjovik emailed Polkes (Apple HR Business Partner) via their
9 Apple email accounts:

10 “I hope you’re well. I’ve been going through a lot this year and last year, and
11 I’m struggling a bit at work. I was hoping you might be willing to get a virtual
12 coffee with me to chat about it. I don’t have any specific requests but hoping you
13 might have some ideas and wanted you to know where I’m at. Might help if you
14 have time to read this before hand: [article]. Come to find out other people are
15 mysteriously sick too. At least four other women with symptoms like mine so
16 far. There are thousands of people living there though and we’re only starting to
17 spread the word. Article is up to over 33k views though... progress... The
18 government still won’t investigate. I’ve spent 7 months trying to fight to get them
19 to do something. Even with more sick people they won’t. Met with a state senator
20 yesterday and the mayor of Santa Clara city today... hopefully will make some
21 impact. Anyhow, I have a lot on my plate between this, work, and school. My
22 mental health as been struggling. I’m seeing a therapist, but this type of PTSD
23 sounds completely expected for what I’ve gone through and am still going
24 through.”

25 220. On April 9 2021, Gjovik emailed the Santa Clara County District Attorney’s
26 office with an emailed subject line of: “Possible Environmental Crime; Fear of Retaliation,
27 Harassment, or Worse for Exposing It.” Gjovik reported that “other tenants from that apartment
28 complex started reaching out ... [she has] a least four other women who said they also had
severe mystery illnesses since moving in and one of them in my building was apparently in &
out of the E[mergency] R[oom] for two years. They all said doctors had no idea what was
happening to them. Two guys also had unexplained allergies/breathing issues/sleeping issues
since moving in.”

1. On July 2 2021, Gjovik noticed that Seiger and Jain were in an EHS team
reporting to Schmidt. Gjovik wrote: “I remember having a phone call with Elizabeth Schmidt in
mid-September 2020 about my chemical exposure at my apartment and the building uphill that

Apple previously leased for industrial use (it had a groundwater plume flowing in direction of my apartments). She had said she led a Real Estate & Development team — I didn't realize she also had EH&S under her as well.” They never responded.

221. A chemical emergency occurs when a hazardous chemical has been released (i.e., industrial accidents, intentional, etc.) and the release has the potential for harming people's health.¹³⁷ In a chemical emergency, if a person comes in contact with a known or unknown chemical, they should get away from the area, get it off their body as soon as they can, and get help by calling the Poison Control Center at 800-222-1222 or calling 911 or going to the nearest hospital.¹³⁸ The Unidentified Chemical protocol provides basic victim management recommendations but the techniques for a specific chemical could provide information which would allow more effective patient treatment.¹³⁹

222. An environmental emergency is a sudden threat to the public health or the well-being of the environment, arising from the release or potential release of hazardous chemicals into the air, land, or water.¹⁴⁰ An environmental violation occurs when an activity or an existing condition does not comply with an environmental law or regulation. Environmental violations can include emissions from local industrial facilities; improper treatment, storage, or disposal of hazardous wastes; late-night dumping, etc.¹⁴¹

223. Toxic chemicals can often be grouped into classes, whereby all the chemicals in a given class cause similar types of adverse health effects. These constellations of toxic effects or syndromes comprise a set of clinical “fingerprints” for groups of toxicants.¹⁴²

- Acute Exposure to Solvents Toxidrome is marked by a constellation of symptoms including: nervous system depression leading to a decreased level of consciousness, depressed respirations, and in some cases ataxia (difficulty balancing and walking).¹⁴³ This syndrome also includes slurred speech, nystagmus (abnormal eye movements),

¹³⁷ US H&HS, *Chemical Hazards Emergency Medical Management, Information for the Public*, <https://chemm.hhs.gov/publicinfo.htm>

¹³⁸ US CDC, *Chemical Emergencies*, <https://www.cdc.gov/chemicalemergencies/index.html>

¹³⁹ US CDC, *Toxic Substances Portal: Unidentified Chemical*, <https://wwwn.cdc.gov/TSP/MMG/MMGDetails.aspx?mmgid=1138&toxid=243>

¹⁴⁰ US EPA, *How to Report Spills and Environmental Violations*, <https://www.epa.gov/pesticide-incidents/how-report-spills-and-environmental-violations>

¹⁴¹ US EPA, *How to Report Spills and Environmental Violations*, <https://www.epa.gov/pesticide-incidents/how-report-spills-and-environmental-violations>

¹⁴² US H&HS, *Toxic Syndrome Workshop Report*, https://chemm.hhs.gov/Report_from_Toxic_Syndrome_Workshop_final_with_ACMT_edits_cover.pdf

¹⁴³ US H&HS, *Toxic Syndrome Workshop Report*, https://chemm.hhs.gov/Report_from_Toxic_Syndrome_Workshop_final_with_ACMT_edits_cover.pdf

cardiac arrest, chemical burns, skin defatting, and cardiac dysrhythmias (irregular heartbeat).¹⁴⁴ It can be caused by chemicals like benzene, TCE, toluene, xylene, methylene chloride, etc.¹⁴⁵

- Irritant/Corrosive Gas Syndrome includes immediate effects ranging from minor irritation of exposed skin, mucous membranes, pulmonary, and gastrointestinal (GI) tract – to coughing, wheezing, stridor, rhonchi, rales, respiratory distress, burns, bronchial spasm, respiratory failure, and more severe GI symptoms that may progress rapidly to systemic toxicity.¹⁴⁶ It can be caused by chemicals like chlorine, ammonia, nitrogen oxides, carbon monoxide, etc.¹⁴⁷
- “Knockdown” Syndrome includes Altered state of consciousness, progressing from fatigue and lightheadedness to coma; flushing of the skin; fatigue and lightheadedness; nausea; difficulty breathing; anemias; abdominal pain; GI irritation; sedation; hypotension; and bradycardia.¹⁴⁸ It can be caused by chemicals like phosphine, arsine, nitrogen, hydrogen sulfide, etc.¹⁴⁹

Gjovik’s symptoms scored a 7.8/10 for Irritant Gas Syndrome; 4.4/10 for Nerve Agent Toxidrome; 3.2/10 for Knockdown Syndrome; and 3.0/10 for Solvents Syndrome.¹⁵⁰

ii. RCRA: Knowing Endangerment

224. A chemical HAZMAT Incident is the imminent or actual release of a chemically harmful substance into the environment at levels that require urgent response to contain the release and protect humans and the environment.¹⁵¹ If a public health risk exists, notify your state or local health department or another responsible public agency.¹⁵²

¹⁴⁴ US H&HS, Organic Solvents (Acute Exposure to Solvents, Anesthetics, or Sedatives (SAS) Toxidrome), <https://chemm.hhs.gov/sas.htm>

¹⁴⁵ US H&HS, CHEMM-IST, CHEMM Intelligent Syndromes Tool, https://chemm.hhs.gov/chemmist_detail.htm

¹⁴⁶ US H&HS, Toxic Syndrome Workshop Report, surpa; Lung Agents, <https://chemm.hhs.gov/lungagents.htm>

¹⁴⁷ US H&HS, CHEMM-IST, CHEMM Intelligent Syndromes Tool, https://chemm.hhs.gov/chemmist_detail.htm

¹⁴⁸ US H&HS, Blood/Systemic Agents (Knockdown Toxidrome), <https://chemm.hhs.gov/bloodagents.htm>

¹⁴⁹ US H&HS, CHEMM-IST, CHEMM Intelligent Syndromes Tool, https://chemm.hhs.gov/chemmist_detail.htm

¹⁵⁰ US H&HS, CHEMM IST, <https://chemm.hhs.gov/chemmist.htm>

¹⁵¹ US H&HS, Chemical Hazards Emergency, *Quick Response Guide*, <https://chemm.hhs.gov/quickresponseguide.htm>

¹⁵² US CDC, *Toxic Substances Portal: Unidentified Chemical*, <https://wwwn.cdc.gov/TSP/MMG/MMGDetails.aspx?mmgid=1138&toxid=243>

1 225. Conducting an activity in the wrong place can render such activity abnormally
2 dangerous.¹⁵³ Operating a silicon fabrication factory can be a ultrahazardous activity. The
3 activity has a high degree of risk of some harm to people, land, and chattels; a likelihood that the
4 harm will be severe; there is an inability to eliminate the risk by the exercise of reasonable care;
5 the activity is not a matter of common usage; the activities were inappropriate for the locations
6 where they were carried on.¹⁵⁴

7 226. Semiconductor fabrication adjacent to a residential area is an ultrahazardous
8 activity. For decades, its known to require use of pyrophoric gases which have a “serious fire
9 hazard,” combustible and flammable chemicals which must be “carefully monitored and handled
10 by experienced personnel,” heating devices and ignition sources, and complex fire suppressant
11 systems. Air handling systems at these plants must control “the spread of contaminants.”¹⁵⁵
12 There is an entire section of the US OSHA website dedicated to semiconductor fabrication.¹⁵⁶

13 227. Gjovik’s home was 300 feet from Apple’s fabrication plant. Like in the classic
14 California ultrahazardous activity case, *Alonso v Hills*, an ultrahazardous activity like use of
15 poisons or blasting, only 200 yards (or here, 300 feet) from hundreds of homes in a residential
16 district, will be found to be an ultrahazardous activity with strict liability even without proof of
17 negligence.¹⁵⁷ Gjovik’s case is similarly comparable to *Green v General Petroleum*, where oil
18 drilling itself is not an ultrahazardous activity, but the California Supreme Court found that
19 drilling for oil directly next to someone’s home (the property line roughly 200 feet away), is
20 indeed a strict liability ultrahazardous activity.¹⁵⁸

21 ¹⁵³ Gerald W. Boston, Strict Liability for Abnormally Dangerous Activity: The Negligence Barrier, 36
22 SAN DIEGO L. REV. 597, 615 (1999); Valerio Spinaci, Lessons From BP: Deepwater Oil Drilling is an
23 Abnormally Dangerous Activity, Nova Law Review, Volume 35, Issue 3 (2011).

24 ¹⁵⁴ Restatement of Torts Second, section 519-520

25 ¹⁵⁵ IMUA's Manufacturer's and Dealer's Committee, “Underwriting Semiconductor Manufacturing
26 Exposures,” 2000,
27 [https://www.imua.org/Files/reports/Underwriting%20Semiconductor%20Manufacturing%20Exposures.ht](https://www.imua.org/Files/reports/Underwriting%20Semiconductor%20Manufacturing%20Exposures.html)
28 [ml](https://www.imua.org/Files/reports/Underwriting%20Semiconductor%20Manufacturing%20Exposures.html)

29 ¹⁵⁶ US OSHA, Silicon Device Fabrication, [https://www.osha.gov/semiconductors/silicon/device-](https://www.osha.gov/semiconductors/silicon/device-fabrication)
30 [fabrication](https://www.osha.gov/semiconductors/silicon/device-fabrication); Silicon Manufacturing, <https://www.osha.gov/semiconductors/silicon> ; GA Device
31 Manufacturing, <https://www.osha.gov/semiconductors/gallium-arsenide> ; GA Device Fabrication,
32 <https://www.osha.gov/semiconductors/gallium-arsenide/device-fabrication>

33 ¹⁵⁷ *Alonso v. Hills* (1950) 95 C.A.2d 778, 214 P.2d 50; *McKenna v. Pacific Elec. Ry. Co.* (1930) 104 C.A.
34 538, 540, 286 P. 445.

35 ¹⁵⁸ *Green v. General Petroleum Corp.*, 205 Cal. 328, 333-34 (Cal. 1928)

1 228. Here, the use of these chemicals was only a few hundred feet from homes and the
2 chemicals in question were being emitted from vents.¹⁵⁹ The storage, use, and release of
3 dangerous, highly poisonous gas in a residential area, is an activity which, even when conducted
4 with the greatest of care and prudence, could cause damage to others in the neighborhood and
5 thus is an ultrahazardous activity.¹⁶⁰ The possible consequences of the gas escaping and causing
6 harm were known or should have been known.

7 229. In late March 2021, SF Bay View published an article written by Gjovik
8 complaining about the air around 3250 Scott Blvd and complaining the government was doing
9 enough to help her investigate. In the article Gjovik describes how ill she got:

10 “I feared the worst and headed to the emergency room. Over the next few weeks,
11 my condition only worsened, with bizarre muscle numbness and spasms and the
12 onset of daily near-fainting spells where I would get so dizzy that I would have
13 to immediately lie down, sometimes for hours, before I could regain balance. I
14 spoke with dozens of doctors who performed extensive testing to try to identify
15 the cause of my sudden and worsening cardiac and neurological issues. The
16 doctors were perplexed. While the tests showed my blood pressure, heart rate and
17 other vitals were abnormal, no tests or imaging could identify why. My doctors
18 screened me for all sorts of severe, permanent and often fatal illnesses. The
19 symptoms were so debilitating and unpredictable that I felt I had no control over
20 my body. I really thought I could be dying. I bought books on coping with
21 terminal illness; notified friends of the location of my will and power of attorney
22 documentation. I slept with my phone by my bed in case I had to call 911 in the
23 middle of the night. I was utterly terrified. I spent the next six months on medical
24 leave and disability, contemplating what my future would hold. I work full time
25 as a program manager while attending law school to become a public interest
26 attorney. But faced with an apparent severe long-term disability or even a fatal
27 illness, I had to consider if I needed to quit my job and drop out of school – and
28 what that would mean for my future.

...

A friend suggested I check if carbon monoxide might be causing hallucinations.
I checked a new, more advanced air quality monitor and, to my surprise, the
monitor showed very high levels of something called “tVOCs.” I didn’t know
what that meant, but I noticed something compelling. One of my most bizarre
symptoms since moving in was waking up every few weeks exactly at 3 a.m. and
feeling like I was choking and going to vomit. When I looked, the “tVOCs” on
my monitor spiked exactly at 3 a.m. I also noticed the tVOCs seemed to rise and

¹⁵⁹ *Edwards v. Post Transportation Co.*, 228 Cal.App.3d 980, 279 Cal. Rptr. 231 (Cal. Ct. App. 1991);
Blackwell v. Phelps Dodge Corp., 157 Cal.App.3d 372, 203 Cal. Rptr. 706 (Cal. Ct. App. 1984).

¹⁶⁰ *Langlois v. Allied Chem. Corp.*, 258 La. 1067, 1083, 249 So. 2d 133, 139 (1971)

1 fall at different times of the day when I was having the worst symptoms. I began
2 to think that there was an important correlation between this data and my
symptoms.

3 ...

4 I talked to the city, county and state health departments. I talked to the planning
5 and code enforcement agencies. I talked with several of the California EPA
6 agencies. I've also been talking with the federal EPA. All of the agencies that did
7 respond said the only agency who can act is DTSC. Otherwise, the property
8 manager must act on their own initiative. Many of these agency employees I
9 talked to said over the phone said that they were concerned to hear about the
conditions of the site and risk to the community and they offered apologies for
not being able to help.

10

11 This article is my first public statement on what happened, and I'm doing it
12 despite my fear of retaliation, because I am deeply worried about the health and
safety of the folks living on that property and the apparent systemic failures in
preventing and addressing these types of issues.”¹⁶¹

13 230. Once the article was published, other victims contacted Gjovik who also lived
14 there and who were also mysteriously ill. Gjovik organized communications with the victims
15 and provided them access to the records she found through research. They organized together
16 and discussed escalating to the government to verify Gjovik's claims.

17 231. On May 3 2021, one of the other victims sent an email to the Mayor of Santa
18 Clara and included Gjovik. The person wrote:

19 “I am a current resident at Santa Clara Square apartments in Santa Clara. My
20 husband and I have been in touch with Ashley Gjovik after she recently wrote an
21 article about her experience with VOC fumes while living at Santa Clara Square.
22 We were compelled to reach out to her since her experience is very similar to what
23 I have been going through and doctors have been telling me I'm a “medical
24 mystery” ... It started off with waking up in the mornings with bloody noses,
25 congestion, sinus pressure, sore throat, and headaches. I would only have these
26 issues when I woke up in the morning and when I returned in the evenings from
27 work...I started having lightheaded/dizzy spells. Sometimes it would happen while
walking through the apartment. Sometimes it would happen while I was just sitting
still. I would feel like I was about to fall out of my chair for no reason.... I started
experiencing tingling/numbness in my fingers and hands. My arms would be
straight with no possibility of me pinching my veins so I decided to call another

28 ¹⁶¹ Ashley Gjovik, *I thought I was dying: My apartment was built on toxic waste*, SF Bay View, March 26
2021, <https://sfbayview.com/2021/03/i-thought-i-was-dying-my-apartment-was-built-on-toxic-waste/>

1 doctor once again for the ongoing issue with my lips, the dizzy spells, and now the
2 numbness....”

3 Apparently the Mayor never responded. The mayor also stopped responding to Gjovik and
4 would not even reply once Gjovik realized what Apple was doing at 3250 Scott Blvd and
5 informed her. It’s unclear how many people were injured.

6 232. On June 12 2023, Gjovik filed complaint about Apple’s activities at 3250 Scott
7 Blvd to US EPA, CalEPA, Santa Clara Fire Department and gave copies to the labor agencies
8 investigating those charges into Apple. Gjovik alleged violations of The Clean Air Act (1970);
9 The Resource Conservation and Recovery Act (1976); The Toxic Substances Control Act
10 (1976); Comprehensive Environmental Response, Compensation, and Liability Act (1980);
11 Emergency Planning and Community Right-to-Know Act; Pollution Prevention Act (1990);
12 among others. Gjovik also noted the cover sheet that it was a potential RCRA § 7002(a)(1)(B)
13 action, implying she believed the situation was “Knowing Endangerment” and if US EPA did
14 not investigate she may sue to force an investigation. Gjovik’s complaint also accused Apple of
15 criminal conduct at the site.

15 **iii. RCRA: Unlawful Disposal**

16 233. US EPA Criminal Enforcement provides guidance on “Signs of Environmental
17 Violations” which includes “visible sheens on the ground,” “foul smelling or strange looking
18 emissions into the air,” and “stains around drains, sinks, toilets, or other wastewater outlets.”¹⁶²
19 The Office of Enforcement and Compliance Assurance also suggests signs of possible
20 violations, including: “strong, offensive, or unusual chemical odors.”¹⁶³

21 234. Per a TRI filing, in 2020, Apple claims to have released hundreds of pounds of
22 NMP into the ambient air at 3250 Scott Blvd. Under the EPCRA Section 313, NMP is a TRI-
23 reportable substance effective January 1, 1995.

24 235. The US EPA found in 2019 that there is clear and consistent evidence for adverse
25 reproductive and development effects following N-Methyl-2-Pyrrolidone (“NMP”) exposure
26

27 ¹⁶² US EPA, Enforcement, *Signs of Environmental Violations*,
28 <https://www.epa.gov/enforcement/criminal-enforcement-signs-environmental-violations>

¹⁶³ US EPA, Office of Enforcement and Compliance Assurance, Reporting Environmental Violations,
<https://www.epa.gov/sites/default/files/documents/rav-english-brochure.pdf>

1 across oral, inhalation, and dermal exposure routes.¹⁶⁴ In the 2022 final revised risk
2 determination, EPA determined that NMP presents an unreasonable risk of injury to human
3 health under its conditions of use.¹⁶⁵

4 236. Complaints to an employer about dangerous conduct by coworkers that could
5 lead to emissions of dangerous chemicals into the environment is protected.¹⁶⁶ Here, Apple's
6 hazardous waste air emissions were being vented directly into the atmosphere and activated
7 carbon was not being used or maintained properly.¹⁶⁷

8 237. On March 1 2023, Gjovik asked if any chemists followed her Twitter account and
9 could weigh in on if NMP could cause the reaction she saw on her jeans. On March 2 2023 and
10 for several days following, a Twitter account created specifically to interact with Gjovik about
11 her claims about N-Methyl-2-pyrrolidone (NMP), "Sybil", replied repeatedly to her posts. Sybil
12 repeatedly claimed NMP is completely safe, not banned, and that Gjovik was lying about the
13 yellow clothes and rusty jeans and it was occurring simply because Gjovik did not know how to
14 do laundry properly. Even after blocking the NMP account, it continued to stalk Gjovik's posts
15 and continue posting, next calling for Gjovik's account to be suspended due to supposedly
16 spreading misinformation about NMP. Under information and belief, Sybil was Apple.

17 238. On March 11 2023, a fake account ("Comrade Jones", sorry@butno.com) sent
18 Gjovik an email claiming to be an ex-EPA compliance/enforcement employee. The account
19 attempted to get Gjovik to stop talking about the vapor intrusion documentation for 825 Stewart
20 Drive and tried to get Gjovik to stop talking about the NMP. The account made threats to
21 intimidate Gjovik. The IP came from a location known for spam accounts. Under information
22 and belief, "Comrade Jones" was Apple.¹⁶⁸

23 239. This was not the first time Gjovik got on to Apple's illegal hazardous waste
24 disposals. Back in 2021, Gjovik also raised concerns about Apple's history of negligence with
25 due diligence, safety precautions, and lack of disclosure to employees around hazardous waste
26 and its health impacts, citing the *People of the State of California v. Apple Inc* lawsuit over
27 violations of Health and Safety Code, §§ 25100 and implementing regulations. The settlement

28 ¹⁶⁴ Ladou and Harrison, *Current Diagnosis & Treatment: Occupational & Environmental Medicine*, 6th
Edition, page 549-550, (2021).

¹⁶⁵ US EPA, TSCA: NMP, 2022, <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-n-methylpyrrolidone-nmp>

¹⁶⁶ Id.

¹⁶⁷ *Surrette Foster Wheeler Environmental Corp.*, 1999-CAA-17 and 18 (ALJ May 31, 2000).

¹⁶⁸ Twitter, Ashley Gjovik, <https://twitter.com/ashleygjovik/status/1634647629421223936>

1 required injunctive relief to cease unlawful actions, require training at California Compliance
2 School, conduct inspections and maintain documentation, and to pay the Department of Toxic
3 Substances control \$450,000.¹⁶⁹

4 **C. US EPA & US DOL CHARGES**

5 240. After research of government records and discussion with EH&S about the TRW
6 Microwave site, Gjovik became concerned about the likelihood of vapor intrusion with the
7 cracks in the floor; Apple's refusal to perform indoor air testing until after the fix the cracks in
8 the floor; Apple's shifting plans during their meetings whether they would test the air, not test
9 the air, maybe test the air, and so on without explanation as to why a change in plans; Apple's
10 refusal to survey the office for cracks in the floor under the carpet; Apple's plan to only test the
11 air with HVAC on and normal usage of the building; the sudden, unexpected departure of the
12 manager who ran Apple's Superfund due diligence program for seven years in the same time
13 period the cracks in the office floor were noted; comments from Gjovik's manager that her
14 safety concerns were disruptive and to not speak about them with coworkers; comments from
15 employee relations to not share her safety concerns with coworkers; comments from EH&S that
16 they prefer employees do not report safety concerns to the government. Gjovik complained to
Apple, to the government, to the press, and to the public.

17 241. An employee's activities are protected under the environmental statutes when
18 they make formal or informal complaints, but also when they are seeking basic information and
19 happen to mention a concern. Protected activity is based on the communication of information to
20 the government, regardless of motive.¹⁷⁰ Gjovik complained and provided information to the
21 EPA, a state agency, and a local government agency regarding potential environmental
22 violations and other issues related to an Environmental Statute. Gjovik assisted and was about to
23 assist in an environmental inspection by the EPA or a state or local government agency. Gjovik
24 Complained to the EPA, a state agency, and a local government agency regarding potential
environmental violations and other issues related to an Environmental Statute.

25
26
27 ¹⁶⁹ *People of the State of California v Apple Inc.*, Case No. 16CV303579, Final Judgement Pursuant to
Stipulation, pg62-63, (Dec 2016).

28 ¹⁷⁰ *Lassin v. Michigan State University*, 93-ERA-31 (ALJ Sept. 29, 1993) – (“The ALJ stated that the
public policy of facilitating the information to the government is served irrespective of the reporter's
specifically defined intent in making the communication.”)

242. Further, evidence of related action, corrective or otherwise, taken by the Respondent following initiation of a government investigation but prior to the Complainant's termination is relevant to the issue of the mindset of Respondent's deciding officials at the pertinent time.¹⁷¹ This also includes any government investigative reports, especially if they document knowing deliberate violations of the environmental statute.¹⁷² Gjovik did not know until May 2022 that there had been an inspection at her office in August 2021, and Gjovik did not know about Apple's semiconductor fabrication activities in 2020 until February 2023. However, with both locations, Gjovik's complaints led to government inspections, reports, and corrective actions.

i. Gjovik's 2020 Complaints to US EPA, CalEPA, & Fire Department

243. The US EPA Environmental Violation page has a webform with specific questions and possible responses designed by the agency. The page asks about the violation is it still occurring and is it an emergency; it asks if the "intention" was accidental, intentional, or unknown. It asks if the violation method was release, dump, spill, spray, fill, or falsified records. It also asks as to the affected subjects providing land, water, air, worker, and/or documents. There is then a "Violation Description" box.¹⁷³

244. On September 6 2020, Gjovik emailed the Santa Clara Fire Department about the air. Gjovik emails Fire Dept, and said:

"I have good reason to believe I've been/continue to be exposed to (and poisoned by) hazardous materials/fumes since I moved into my Santa Clara apartment in February of this year I had major medical issues starting/drastically worsening days after moving in: major dizzy spells, arrhythmia, angina, labile blood pressure, bradycardia, etc. I also developed MS-like symptoms after a month living there. None of the doctors (20+ specialists) found anything... I obtained two air quality monitors with tVOC sensors on 9/2 = started looking at the reports. I saw huge spikes of tVOCs occurring usually daily in my apartment unit, in the evenings and morning, but sometimes in the middle of the night as well. I can usually smell (kinda sweet, but chemically) & feel (skin, lungs, eyes burning — dizzy — nauseous — weak — hard to breath) the fumes before I see the spikes on the monitors. Last night, I got a third monitor (VSON) & the fumes blasted for four hours (10pm-2am) with super high levels of TVOCs (up to at

¹⁷¹ *Timmons v. Mattingly Testing Services*, 95- ERA-40 (ARB June 21, 1996) Slip op. at 14 n.9

¹⁷² *Timmons v. Mattingly Testing Services*, 95- ERA-40 (ARB June 21, 1996).

¹⁷³ US EPA, Report Environmental Violations, <https://echo.epa.gov/report-environmental-violations>

1 least >2 mg/m³ / PPB) & HCHO =up to at least >1.2 mg/m³; 1ppm). My skin
2 still itches & burns, and my rash is getting worse...”
3 Gjovik notified several managers at Apple that she filed a report with the Fire
4 Department.

5 245. On September 8 2020 Gjovik pulled the US EPA ECHO (enforcement and
6 compliance History Online) Facility Report for 3250 Scott Blvd. It noted it was an Apple
7 building actively registered with RCRA but not the Clean Air Act or Clean Water Act. The most
8 recent “Toxic Release Inventory” filing was from 1991. There was no signal to Gjovik that any
9 air emissions were occurring at 3250 Scott Blvd.

10 246. On September 10 2020, Gjovik emailed US EPA Region 9 filing a complaint
11 about the ambient air around 3250 Scott Blvd. She said she has “reason to believe” the property
12 she is living as “is exposing [her] to harmful levels of volatile organic chemicals.” She
13 explained, “I’ve purchased three separate personal tVOC monitors and they’re all showing
14 unhealthy numbers, usually at the same time, often at least twice a day. The fumes seem to come
15 in the worst around 7am-8am and 10pm-11pm. Sometimes it’s quick, and sometimes they blast
16 me for multiple hours.” She added, “When they the fumes are blasting, I can feel & smell it
17 before I see it. My skin burns, my lungs burn, I feel exhausted, like I’m choking. The rash on my
18 arms gets really itchy. My dog is also showing symptoms (lethargy, anxiety, loss of appetite,
19 etc).” She added, “*There’s a chemical smell, sometimes kind of sweet, sometimes like gasoline,*
20 *sometimes like burning plastic... there’s several different ones that will come in. If I go outside a*
get fresh air (or even sit up close next to my windows) I start feeling better. My symptoms seem
to vary with the smells -- some will make me dizzy and exhausted, some will make me lose
coordination and focus, some will make me super nauseous, etc.”

21 247. On September 17 2020, the US EPA Superfund site team responded (Fatima Ty)
22 and said they were looking into her complaint. On September 17 2020, Gjovik responded to Ty
23 saying, “*I’m having an industrial hygienist come out next week to do indoor air samples in my*
unit and to sample the topsoil outside my unit. If you’d also like to run some labs on my unit’s
air (I’d highly recommend it — the VOCs are still blasting daily), I’m happy to let you in while
I’m still here. I’ll offer the same to DTSC and RWQCB if/when they reach out And I also
grabbed a list of the most commonly mentioned chemicals from the soil & groundwater samples
near my unit and have blood & urine tests underway to see if any of them are the VOCs lasting
my unit, and if so how much of them are inside me.” The emails were sent with Gjovik’s iCloud
28 email on her Apple work iPhone and saved in iCloud backups.

1 248. On September 18 2021, CalEPA DTSC (Cheryl) responded to Gjovik saying
2 “Thank you for reaching out with your concerns..... I’d like to talk to you more about your
3 concerns, the sampling that you’re doing, and what DTSC can do to make sure that no one is
4 inappropriately exposed to any chemicals remaining on this property...”

5 249. On September 19-20 2020, Gjovik emailed Cherly that she was inspecting the
6 hazardous waste “containment cells” in the parking garage and was “shocked to find a ton of
7 giant cracks in the cement.” She noted “some of them were oozing moisture.” She noted she was
8 “scared of getting caught by a security guard again looking like amateur detective in the middle
9 of the night” so she did not complete her inspection on the first night but did the next day where
10 she found more cracks in the cement. She took dozens of photos of the cracks and emailed them
11 to CalEPA to review.

12 250. On September 23 2020, the California EPA DTSC South Bay Unit Chief for Site
13 Mitigation emailed Gjovik: “We both checked our schedules and it doesn’t look like we’re going
14 to be able to come and do a walkthrough with you=before you move. We’ll make sure that
15 when the Irvine company does sample that they coordinate with us so that we can oversee the
16 sampling and make sure that they are doing it right. We’ll ask them to give us a sampling plan
17 before they collect samples, and it will explain their rational for sample placement. I’ve already
18 asked if they can do both the first and fourth floor. As you mentioned in an email, the first floor
19 would be a good place to check if vapors are coming up through the concrete slab. Your unit is
20 on the 3rd floor, so my guess is that if there are chemicals coming from soil or groundwater, they
21 aren’t just coming up through the concrete, but they’re moving through utility pipes. If that’s
22 what’s happening, then the vapors could bypass the first floor. Testing in your unit, or as close
23 as possible, would help us understand if that’s happening.”¹⁷⁴

24 **ii. US EPA August 19 2021 Inspection**

25 251. On July 26 2021, US EPA CERCLA QA (Plate) discovered and informed the
26 CERCLA Site PM (Shulman): “In the main building the SSD vents appear to be under
27 components of the chiller. This is not appropriate and we should discuss. We should also get the
28 distances between the vents and the HVAC outdoor air intakes.”

 252. On July 26 2021, US EPA CERCLA site team (Shulman) emailed Northrop
Grumman saying: “EPA requests a site walk and inspection visit of the TRW Microwave Site

¹⁷⁴ Email from Prowell to Gjovik; September 23 2020; Subj: *Checking In*

1 825 Stewart Drive building. Can you arrange for EPA access to the building from the current
2 property owner, which I believe is GI DC Sunnyvale LLC? Myself and [Plate] with EPA request
3 reasonable access to visit the items addressed in the attached annual inspection memo and the
4 2014-2015 building mitigation measures that addressed the potential for vapor intrusion into the
5 building mitigation measures that addressed the potential for vapor intrusion into the building
6 which included: the sub-slab depressurization system.. the building's concrete slab and cracks
7 that were sealed to prevent vapor intrusion. As well as any building concrete slab penetrations..
8 past indoor sampling locations... the spaces between the walls of the three sections of the
9 building that were sealed in 2014-2015... the location of the groundwater monitoring wells.”
Subj: Site Visit: TRW Microwave Site 825 Stewart Drive building.”

10 253. On July 27 2021, Gjovik emailed US EPA (Perez-Sullivan) and said: “Thank you
11 very much, Margot. I look forward to hearing how the conversation goes and if any changes will
12 be made to the plan of record.

13 254. July 28 2021, Northrop Grumman responded to US EPA: “We are available on
14 Thursday 8/19. I am still waiting for confirmation from GI Partners and Apple, but I would not
15 expect there to be any issues with them. I will give you the final confirmation on it by end of the
16 week.”

17 255. On July 28 2021, US EPA (Perez-Sullivan) emailed Gjovik and wrote: “Hi
18 Ashley, Thanks again for your continued interest in this site and providing your on-the-ground
19 observations. EPA communicates regularly with responsible parties on issues related to
20 superfund sites as part of the agency's CERCLA obligations. Similarly, EPA also routinely
21 follows up on concerns raised by the public in regard to superfund sites. The agency takes these
22 communications and on-the-ground observations seriously. Please continue to check the website
23 for any site updates. Please do connect me with the reporter you're working with on this and
24 thank you again for voicing your concerns and providing us with such detailed information.”

25 256. On July 29 2021, US EPA CERCLA QA (Plate) emailed: “Michael has proposed
26 to me and I am in support of a one-day inspection/sampling event on August 18 [2021].”¹⁷⁵

27 257. On July 30 2021, Northrop Grumman emailed US PA noting they will have their
28 Project manager (Kurt), the AECOM Project Manager, and Michael Shannon (Northrop

¹⁷⁵ US EPA email from Poalinelli; July 29 2021 11:14am; Subj: *TRW Microwave Site 825 Stewart Drive building*

1 Grumman’s Corporate Manager of Environmental Remediation) at the inspection. They noted
2 that GI Partners (owner) did not indicate any plans to attend.

3 258. No later than July 29 2021, the US EPA had scheduled the CERCLA inspection
4 at Gjovik’s office and submitted travel requests for staff with the business justification of:

5 “Description of work: A site visit to an Apple office building is necessary to
6 conduct a visual inspection of the building's vapor intrusion mitigation measures.
7 An Apple employee recently contacted EPA and notified EPA that there were
8 cracks in the building's foundation. If true and the cracks are significant, this
9 could impact the effectiveness of the VI mitigation system the protectiveness of
10 human health. The onsite work will include visual inspections to the: (1) The
11 vapor intrusion passive sub-slab depressurization system. (2) The building's
12 concrete slab and past cracks that where sealed to prevent vapor intrusion. (3)
13 Past 2013 to 2015 indoor air sampling locations. (4) The indoor location where
14 contaminated soil was excavated from underneath the building. (5) The spaces
15 between the walls of the three sections of the buildings that were sealed in 2014-
16 2015. (6) The groundwater in-situ bioremediation system (outdoors).”¹⁷⁶

17 US EPA approved the site visit on July 30 2021.

18 259. On August 2 2021, Gjovik emailed US EPA (Perez-Sullivan) and said: “Thanks,
19 Margot. Are you telling me there will be an update posted to the website about this? Or just
20 suggesting a hobby that I can check the website every day to see if anything changes? Can you
21 share the outcomes of those conversations please? It sounds like they’re doing some kind of
22 maintenance work at the office on Wednesday. Since Apple refuses to answer any more of my
23 questions I’d be curious if you know what they’re doing. You should be getting a call / email
24 tomorrow from the NYT.”

25 260. On August 3 2021, US EPA (Perez-Sullivan) wrote to Gjovik: “It sounds like
26 I’ve offended you with my suggestion to check the website. I’m so sorry, that was not my intent.
27 We are working to ensure all of our superfund site web pages are updated with the latest
28 information and I often suggest interested parties check the web for updates. I’m not sure what
conversations you’re referring to – if it’s the conversations that occur with responsible parties, I
am not a part of those calls so I don’t know what was said. I want to reiterate that I appreciate
your time and patience and let you know we take your on-the-ground observations seriously.
Very respectfully, Margot”

¹⁷⁶ US EPA email to Poalinelli; July 29 2021 9:53pm; Subj: *SEMD Travel Request*; US EPA email: July 30 2021, Subj: “*SEMD Fieldwork Request - initial approval status*”

1 261. On Aug 10 2021, Northrop Grumman emailed EPA saying: “I heard back from
2 Apple and the earliest that can get us in the building is 8:00AM.”

3 262. On August 16 2021, another US EPA travel request noted: “A site visit to an
4 Apple office building is necessary to conduct a visual inspection of the building's vapor intrusion
5 mitigation measures. An Apple employee recently contacted EPA and notified EPA that there
6 were cracks in the building's foundation. If true and the cracks are significant, this could impact
7 the effectiveness of the VI mitigation system the protectiveness of human health.”

8 263. On August 10 2021, US EPA emailed about Apple trying to force them to sign a
9 restrictive 4-page NDA about the inspection: “Regarding the NDA the EPA site attorney spoke
10 to an Apple attorney and EPA is not going to sign the Apple NDA. Apple will send a letter to
11 EPA saying that everything we create during the Site Walk (e.g., field notes, photos) is being
12 claimed by Apple as CBI and we will treat it as such under our CBI regulations at 40 CFR Part 2.
13 After the visit, we will send Apple back everything we created so they can then substantiate their
14 claim. We will want to work with the Apple representative while onsite to minimize any creation
15 of CBI. So, for example, fi it's possible to take a photo at an angle that wouldn't be claimed as
16 CBI that is probably what we'd want to-do. Let me know if you have any questions.”

17 264. On October 7 2021, US EPA emailed Northrop Grumman a report about the
18 inspection, saying: “Please find attached a letter EPA’s follow up comment son the August 19
19 2021 site visit of the 825 Stewart Drive building. EPA requests that NGC provide a written
20 response to EPA’s comments in the next 30-days.” Northrop Grumman sent their response
21 November 5 2021, and they have been going back and forth about the action items since.

22 **iii. Gjovik’s August 29 2021 Complaint to US EPA & CalEPA**

23 265. Gjovik first contacted the US EPA about her office on April 22 2021, emailing
24 Michael Shulman, the site manger for TRW Microwave.

25 Hi Michael! I hope you’re well. I work for Apple in the TRW Microwave (Building
26 825) site in Sunnyvale — part of the “Triple Site.” I have some concerns about the
27 current status of the building. I’m talking to our EH&S team at work about it and
28 they said I’m allowed to reach out to you and talk to you directly as well. I’ve
skipped the majority of the site documentation on the EPA and Water Boards
portals. (Thanks for adding the 2019 FYR!) Apple also shared the Dec 2015 indoor
air testing summary. Would you be open to a phone call to discuss the site and some
of my open technical questions? I can talk before 10:30am or between 2-4pm
tomorrow, or anytime Friday before 11am, or between 12-2, or after 3pm.

1 266. She attempted to talk to the site manager but they made her talk to the public
2 relations manager, Margot Perez-Sullivan. Gjovik and Margot emailed back and forth for several
3 months, ultimately leading to the initiation of the August 19 2021 inspection.

4 267. Under CERCLA, Gjovik complained to the EPA, a state agency, and a local
5 government agency regarding potential environmental violations and other issues related to an
6 Environmental Statute. On August 29 2021 Gjovik filed a formal complaint about her office to
7 the US EPA. Gjovik reported a “*possible environmental violation*” that she thought was
8 “*intentional*” and included “*falsified*” records, and it was still occurring, and impacted “Air,
Workers, and Documents.” For Violation Description, Gjovik wrote:

9 As reported to the EPA Superfund site community contact (Margot Perez
10 Sullivan), I've had concerns since March 2021 about Apple's oversight & lack
11 of due diligence for the safety of their employees in the TRW Microwave
12 Superfund site (825 Stewart). I've expressed concerns about negligence and
13 even recklessness, possible violations of Right to Know & OSHA. Worse,
14 Apple's response has been to misrepresent their activities and the site, intimidate
15 me to not speak about workplace safety concerns related to the site, and have
16 refused to notify the Federal EPA of changed circumstances at the site (e.g.
17 cracks in the cement floor requiring repair). Apple has frequently told me they
18 refuse to answer any of my questions about safety or the site, and even pressured
19 me into requesting an ADA accommodation request to work remotely to not be
20 exposed to the chemicals at the site, after pressuring me to file a worker's comp
21 claim for a fainting spell I had in 2019, which I believe to be caused by vapor
22 intrusion. Apple has refused to test the indoor air for vapor intrusion until after
23 they seal the cracks, despite the last testing being done in 2015 and was limited
24 (10hrs) and the only time the results ever came back without vapor intrusion
above max EPA industrial limits (there was a long history of toxic indoor air
vapor intrusion in the building). Further, Northrup Grumman is the responsible
party and their ex-CEO/President, Ronald Sugar, is now on the Board of
Directors of Apple & the Chair of the Finance & Audit committee. I can provide
documentation for all of the above. I reported my concerns about conflicts of
interest to Apple. I've also filed DOL OSHA Whistleblower retaliation
complaints, and claims with the EEOC, NLRB, & CA DEFH.

25 Gjovik also filed the same type of complaint to the California EPA on August 30 2021 (COMP-
26 51794).

27 **iv. Gjovik’s August 29 2021 Charge Filed to US DOL DWPP**

28 268. Gjovik Complained to the US DOL regarding potential environmental violations
and other issues related to an Environmental Statute. Gjovik filed a charge with the US DOL

1 DWPP “OSHA Online Whistleblower / Retaliation Complaint” hotline on August 29 2021 at
2 2:32pm EST. (ECN76833). Gjovik’s complaint described the following adverse actions:
3 “Suspension, Harassment, Intimidation, Constructive Termination, Threat to take above.” As for
4 why she believed she “suffered adverse employment actions?” Gjovik checked the following boxes
5 on the form: “*Called/filed complaint with OSHA & U.S. EPA, Complained to management about*
6 *unlawful conditions conduct or practices, because of sex & disability, because engaged in concerted*
7 *activities, reported injury, Participated in safety & health activities, refused to perform unsafe task.*”
8 [Note: the US DOL DWPP form provides no checkbox option for making environmental complaints
9 as the basis of retaliation.]_As for” What *reason did employer give for action?*” Gjovik responded:
10 “*No rational / legitimate reason was provided.*” As for, “*Anything else for OSHA to know?*” Gjovik
11 responded, “*I also filed complaints with NLRB, EEOC, & DFEH.*”

12 269. An investigator contacted Gjovik on August 31 2021 and asked Gjovik to answer
13 six questions within 10 days. Gjovik was concurrently working with US NLRB and US EEOC
14 on the intake of those complaints. On September 8 2021 Gjovik sent the investigator the
15 complaints she had made thus far and said she was working on her responses to the
16 investigator’s questions. Gjovik’s September 8 2021 email noted her US EEOC complaint and
17 quoted it saying, “In March 2021, I began to raise concerns about the safety of my office due to
18 it being an EPA Superfund site” and that her manager then gave her a “warning” but “not more,
19 because [he said she] was having ‘mental health’ issues.” She reported ostracization,
20 reassignment, increase in workload, increase in unfavorable work, unwanted investigations,
21 misuse of ADA procedures, and being put on indefinite administrative leave despite her
22 objections. Gjovik noted her California Department of Labor DIR Retaliation complaint which
23 included her statement ‘I was threatened, harassed, intimidated, suspended, and constructively
24 terminated.’ Gjovik also included her August 26 2021 NLRB charge which noted “On March 17
25 2021 I raised concerns about unsafe work conditions at my Apple office... the TRW Microwave
26 federal EPA Superfund site... to my managers and colleagues. I was given a ‘warning’ by
27 Manager #1 & told not to speak to my colleagues or publicly about my concerns.” She
28 complained Apple Employee Relations “intimidated me to not speak about my safety concerns
or the status of the office as a Superfund.”

29 270. Gjovik’s September 8 2021 email also included her complaints to US EPA
30 (August 29 2021) and California EPA (August 30 2021). These complaints noted she had been
speaking with Perez-Sullivan since March 2021 about her concerns about “Apple’s oversight
and lack of due diligence” at “the TRW Microwave Superfund site.” She said, “I’ve expressed

1 concerns about negligence and even recklessness, possible violations of Right to Know....” She
2 complained “Apple’s response has been to misrepresent their activities and the site, intimidate
3 me to not speak about workplace safety concerns related to the site, and have refused to notify
4 the Federal EPA of changed circumstances at the site (cracks in the cement floor requiring
5 repair).” She said, “Apple has refused to test the indoor air for vapor intrusion until after they
6 seal the cracks, despite the last testing being done in 2015 and was limited (10hrs) and the only
7 time the results ever came back without vapor intrusion above max EPA industrial limits (there
8 was a long history of toxic vapor intrusion in the building.” She complained “Apple has
9 frequently told me they refuse to answer any of my questions about the safety of the site” and
10 noted the prior CEO of the Responsible Party (Northrop Grumman) is now Chair of Apple’s
11 Finance and Audit committee. She also included her SEC tip which noted the Board of Directors
12 Conflict of Interest again, her complaints about her superfund office, and she also complained of
13 “intimidated by my manager and Apple Employee Relations” and “have since faced multiple
14 types of retaliation for continuing to speak about my concerns about workplace safety and
15 Apple’s unethical, if not illegal, behavior related to the building.”

16 271. On September 9 2021 at 4:47pm PST, Gjovik replied to the US DOL investigator
17 again answering more of the questions and attaching evidence, including texts and emails about
18 the cracked floor, and emails with the US EPA, but she was distracted because the Workplace
19 Violence interrogator had just contacted and threatened her and suspended her accounts. She did
20 state: “Please let me know if you have more questions or if I can provide additional
21 information!” Gjovik replied again at 5:26pm PST with the email from Kagramanov saying
22 “here’s the email from today with them suspending my account access for no idea why. He
23 never responded.” On September 09 2021 11:42PM PST Gjovik replied again, “we’re gonna
24 need to add actual termination to that too. Switching to my ProtonMail — apparently Apple was
25 probably reading my iCloud emails.” She attached the emails with Kagramanov and the
26 termination email and letter.

27 272. The investigator responded the next day, September 10 2021, telling Gjovik
28 “Based on the information you’ve provided, it’s been determined that your complaint falls
within the California – Division of Labor Standards Enforcement’s jurisdiction and therefore
will be referred to them for investigation.”

1 **v. Gjovik’s November 2021 Complaint to US DOL DWPP**

2 273. On November 1 2021, Gjovik contacted the US DOL OSHA investigator again
3 saying the California DOL just opened their investigation and noted California DOL said they
4 would not investigate her SEC complaint (Sarbanes-Oxley) or her environmental complaints.
5 Gjovik wrote, “Please also let me know if my situation (reporting safety concerns and possible
6 unlawful actions to fed & state gov about a private employer in relation to a federal EPA
7 Superfund site with toxic industrial chemicals in the groundwater and soil, and history of levels
8 of industrial chemicals in the indoor air in the office due to said contamination) would be
9 applicable to any of the following and if so how/if I need to file for relief: OSHA, FWPCA,
10 TSCA, CAA, CERCLA.” On November 2 2021, Gjovik also filed a second US DOL DWPP
11 complaint (ECN78416). On November 3 2021 the investigator requested an intake interview and
12 Gjovik confirmed same day for November 8 2021. Gjovik replied the morning of November 8
13 2021 prior to their phone call with “memos” for the investigator to “help the conversation” and
14 her “notes” including a document dedicated to “CERCLA/the env statutes” and a timeline. The
15 timeline included Gjovik’s communications with EPA about the CERCLA institutional controls
16 (slab, HVAC, monitoring ports, sub-slab ventilation, etc.). Gjovik’s CERCLA memo described
17 Gjovik’s office saying “The TRW Microwave Superfund site is part of the Triple Site of three
18 Superfund sites in Sunnyvale, CA. Groundwater plume stretches over a mile. Offices, schools,
19 homes, stores, and restaurants impacted by the vapor intrusion.”

20 274. The “Timeline – v2” document included facts related to the ambient air at 3250
21 Scott Blvd. Gjovik included a conversation with West on April 5 2021, *“Talking about other*
22 *victims coming forward from my 2020 apartment on chemical clean up sites, forwarded an email*
23 *warning me about potential violence from Irvine Company for whistleblowing, and Dan says:*
24 *“Can you send that stuff to my gmail instead of work? My mail account is routinely scanned for*
25 *lawsuits. So best not to have that at work.”* Gjovik noted she and West were “Talking about my
26 SF Bay View about suspected vapor intrusion at my 2020 apartment: Me: We’re getting really
27 worried I’m about to be slapped with defamation and conspiracy (lawsuits). Not reaching out to
28 the press right now. Dan. It’s the playbook. Me: exactly. Dan: Now bury you in litigation. Me:
Just trying to get the Public Health dept to dig in. Dan: Until you settle.

 275. In the Timeline, Gjovik included another conversation she had with West on
April 7 2021, writing: *“I send Dan a photo of me in a meeting with Senator Bob Wieckowski and*
his legislative director and regional manager and a screenshot of an email from CA DTSC

1 saying “Thank you for letting us know that others have reached out to you with health concerns
2 that may be related to Santa Clara Square Apartments. We have alerted BAAQMD, CDPH, &
3 SCCEH..” I say: “Come to find out... Senator Bob is in charge of DTSC’s budget” Dan says:
4 This picture is so cool. Why talk with a mayor when you already spoke to a senator. Me:
5 Because she (Mayor Lisa Gillmor) approved this death trap. Dan: I’m sorry you feel this way.
6 When I spoke with Senator Bob yesterday he was much more empathetic. I’ll let him know in our
7 follow up meeting that it’s probably best to work this at the state level since this affects more
8 than Santa Clara residents. Something like that and she’ll shut up.”

8 276. In the Timeline, she noted on April 12 2021 she told Waibel: ““I knew I worked
9 on Triple Site and had wanted to say something about it for a while (it felt super wrong most
10 people didn’t know) — and took that opportunity to reply all asking questions about why it was
11 happening, was there an incident, etc. I’ve been especially concerned about that Sept ’19 fainting
12 spell I had, the only other thing I’ve ever had like that was the VI chemical exposure last year at
13 my apartment.”

14 277. On November 16 2021 the investigator responded, “After reviewing the
15 information you’ve provided and consulting with my management team, it has been determined
16 your complaint does not meet the criterial for OSHA Whistleblower Protection Program to open
17 an investigation.” She gave Gjovik 10 days to appeal. Gjovik immediately responded
18 complaining and asking for more information why they think her complaints are not valid. The
19 investigator responded the next day, November 17 2021, saying she was reviewing the email,
20 and responded again November 22 2021 saying Gjovik complained about vapor intrusion
21 testing, but it was “addressed”, so her continued complaints about “the same issue” was not
22 protected and offered Gjovik an “appeal letter.” On November 22 2021, Gjovik replied
23 complaining and repeating that she was complaining why Apple suddenly said they would not
24 test, and that there was a cracked slab which was a “change of circumstance per CERCLA” but
25 that “Apple said they were not going to tell the Federal EPA about it.” She said, “I told Apple
26 that was unlawful and then I reported it to the Federal EPA who tanked me for reporting
27 something required by CERCLA and then had their team meet with Apple/Northrop to discuss.”
28 She added, “I also raised concerns to the federal EPA that Apple was refusing to test the air for
vapor intrusion until AFTER they fixed the cracks in the floor where the vapor intrusion was
occurring, which would cover up evidence of numerous violations and probably crimes.”

1 278. On November 23 2021 the investigator responded saying “Please send any
2 evidence that you haven’t already submitted by November 30 2021.” Gjovik complained the
3 investigator still had not responded to her questions and asked her for guidance on what
4 evidence she wanted because Gjovik can’t just send her “20,000 files sitting on a hard drive.” On
5 November 24 2021 the investigator then contacted the US EPA and said: “I’m contacting you
6 because I’m currently screening a complaint that was filed by a Ms. Ashley Gjovik. It’s my
7 understanding you have been in contact with her within the last few months regarding possible
8 CERCLA violations. I would like to schedule a phone call with you because I believe you have
9 useful information related to Ms. Gjovik’s complaint.” On December 1 2021 the investigator
10 added in her email to US EPA: “Ms. Gjovik has filed a complaint with OSHA alleging her
11 employer terminated her employment for raising CERCLA violations. I was hoping to get some
12 clarification on what constitutes a CERCLA violation as we only enforce the whistleblower
13 provision. Do you recall if any of the concerns Ms. Gjovik reported to you was a CERCLA
14 violation?”

15 279. On December 10 2021, the investigator notified Gjovik that “OSHA
16 Whistleblower Protection Program (WPP) has opened an investigation into your complaint
17 against Apple Inc.” The letter noted charges under CERCLA, SOX, and OSH Act. On December
18 13 2021, US EPA then sent the investigator a copy of a report about the August 19 2021
19 inspection at Gjovik’s office due to Gjovik’s disclosures (however US DOL OSHA nor US EPA
20 would tell Gjovik about this and she would only find out in May 2022 due to FOIA requests).

21 280. On December 13 2021, Gjovik emailed the investigator about the letter she was
22 sent for the case, which did not mention the cracks in the floor. She wrote “I don’t know if
23 there’s a more detailed version of the allegations you send Apple, but I’d want to ensure we call
24 out I specifically asked Apple to report the cracks on the floor to the Federal EPA (they refused)
25 and request Apple test the indoor air before they fix the cracks in the floor to determine if the
26 cracks were allowing vapor intrusion (they refused again). This is where I believe CERCLA was
27 violated.” The investigator responded December 14 2021 saying “the allegation summary
28 included with the notification letter is only a brief summary. Supplementary information
regarding your allegations will be provided to Apple. Specifically, OSHA will be forwarding
copies of the information you’ve provided thus far.”

1 **vi. Gjovik’s April 2022 Memorandum to US DOL DWPP**

2 281. On March 9 2022 US DOL sent Gjovik Apple’s “position statement,” dated
3 March 4 2022. On March 10 2022, the US DOL investigator confirmed Gjovik can provide a
4 response to the position statement. On March 28 2022, Gjovik sent her response as “US DOL –
5 Full Complaint - Final.” The investigator confirmed response the same date. The complaint
6 discussed Gjovik’s office but also her apartment. On page 51 Gjovik noted, “*Gjovik messaged*
7 *with her Senior Director, Dan West, on April 5 about the vapor intrusion at her previous*
8 *apartment, which sat on contamination from a Superfund site and also an Apple R&D building.*
9 *West asked Gjovik not to send him information about the situation to his personal work email,*
10 *saying: “Can you send that stuff to my Gmail instead of work? My mail account is routinely*
11 *scanned for lawsuits.”*”

12 282. On page 51-52 Gjovik noted from April 5 2021, “*Gjovik emailed Osman Akhtar,*
13 *Director of Apple “AC Wellness” employee medical Centers and Clinical Engineering, with*
14 *whom she had been in previous contact with about her concerns about her apartment... “I just*
15 *heard from four people who are currently at my old [Superfund] apartment and all of them have*
16 *had some unexplained medical issues while living there — one of them severe like me. Two are*
17 *Apple employees. At least one went through AC Wellness but no one could figure out what’s*
18 *wrong with them. I sent Dr. Becky a note about it just now — but heads up for you too. You*
19 *might want to start screening local folks who have otherwise unexplained rashes, dizziness,*
20 *throat/nose/allergy issues, trouble sleeping, trouble breathing, etc. (VOC exposure symptoms).”*”

21 283. On Page 68 Gjovik noted an email she sent Apple EHS on July 8 2021,
22 “*remember having a phone call with Elizabeth Schmidt in mid-September 2020 about my*
23 *chemical exposure at my apartment and the building uphill that Apple previously leased for*
24 *industrial use (it had a groundwater plume flowing in direction of my apartments). She had said*
25 *she led a Real Estate & Development team — I didn’t realize she also had EH&S under her as*
26 *well.”* On page 42 Gjovik noted that the “*Nuclear Regulatory Commission records indicate the*
27 *presence of Strontium-90, Cadmium-109, Thallium-204, and Promethium-147 at the building in*
28 *the 1980s”* at her Apple office.¹⁷⁷ Gjovik’s complaint also noted the ROD was out of date, the
Land Use Covenant needed updated to be even more restrictive, while it already banned “Day

¹⁷⁷ State of California, Department of Health Services, Temporary Registration GL Devices, *Letter from R. Kimball EH&S Coordinator at TRW Microwave to Mr. Joseph Franaszek at California Department of Industrial Relations Radiation Health Unit* (Aug 24 1983),

Care,” “Elder Care”, “Residence Use,” Activities Which Disturb the Remedy and Monitoring Systems, and so on.

284. On June 8 2022, US DOL OSHA said they were in the process of “requesting more information from Apple.” On June 8 2022 Gjovik wrote about the FOIA documents she received, and had shared with US DOL, showing “that EPA inspected [her] office while [she] was suspended” and “that seems like a material omission on Apple’s part in their response.” The investigator said, “I’m in the process of reviewing those records” and that she did not “see a need for additional information from [Gjovik].”

285. On December 16 2022 Gjovik emailed the US DOL OSHA investigator a memo “Gjovik v Apple – Timeline v 10” which “combines and synthesizes [her] original evidence and allegations with evidence that came to light after charges were filed.” She noted in the email “Key Take Aways” including “The HVAC system in Gjovik’s Apple office is expected to have transmitted carcinogenic industrial chemicals into the indoor air since 2015,” “Gjovik must have been removed from the work place on Aug 4 2021 to ensure she could not gather additional evidence about conditions at the site as Apple Inc conducted weeks of repairs of the building before the EPA inspection on Aug 19 2021,” “Apple’s refusal to proceed in settlement agreements with Gjovik unless Gjovik signed a full litigation waiver must have been due to Apple’s knowledge Gjovik was exposed to carcinogenic chemicals for years and faces an increased risk of cancer and other diseases.” The 49-page document organized these facts into sections titled: “Cracks in the Floor,” “SSD System & HVAC,” “ROD & Deed/Land Use,” “Vapor Intrusion and Air Testing,” “Sub-Slab Ports,” “Apple Says Don’t Talk About Safety,” “Obstruction & Cover-Ups.” Page 47 included “2020 08 Gjovik emails safety@apple about home, talks w/ Release Estate manager... Someone over there might even be familiar with this specific area. Looks like there was an Apple building right in the path of the Superfund site’s groundwater, and between it and my building for a bit.”

286. On January 5 2023, Gjovik emailed OSHA again complaining about the delays in her case and reminding them of the evidence she discovered and its implications for her case. On January 12 2023, Gjovik complained again that she still had not received a summary of what OSHA was actually investigating. Gjovik notified them about a December 6 2022 report from US EPA showing EPA ordered Apple to test the indoor air for toxic chemicals and EPA is “overseeing the testing work plan & giving Apple requirements about reporting results.” Gjovik added, “EPA is making Apple test the way I told Apple they should test (Summa canister, etc.)

1 EPA is also making Apple decommission the sub slab vent ports inside the building (which I had
2 expressed concern about the condition of & risk to us from).” Gjovik sent OSHA a URL and it
3 was withing 30 days of the report.

4 **vii. Gjovik’s February 2023 Email to US DOL DWPP (RCRA & CAA)**

5 287. On January 23 2023, US DOL OSHA suddenly announced they were ready for a
6 closing conference. See Objections document for details of this. After the closing conference,
7 US DOL OSHA said they would keep investigating. On February 9 2023, Gjovik emailed US
8 DOL OSHA notifying them she had been talking with CalOSHA about the HVAC/sub-slab
9 ventilation issues at her office, and CalOSHA confirmed in a formal letter that the HVAC/sub-
10 slab issues are under US EPA primary jurisdiction, and OSHA does not have jurisdiction under
11 OSHA laws.

12 288. On February 16 2023, Gjovik wrote to US DOL OSHA, “the US EPA just
13 published the final testing plan for my Apple office & ordered extensive testing protocols which
14 will occur in March, including with a week onsite preparation beforehand. The EPA is forcing
15 Apple to do much of what I told Apple to do in 2021 & Apple refused, - and EPA even said & it
16 is captured in this plan, that Apple's original plan for testing in 2021 was technically insufficient
17 & would have missed chemicals known to be in the vapor intrusion (vinyl chloride - a chemical
18 which is in all of the headlines these days). I'd encourage you all to think about your actions &
19 inactions in my case, & how you will feel if those test results come back positive next month for
20 carcinogenic chemicals & my coworkers were exposed for over sixteen months while a
21 CERCLA whistleblower case was supposedly open but nothing was done to investigate. Test
22 plan: <https://semspub.epa.gov/work/09/100031973.pdf> (Approved Feb 7 2023)”

23 289. On February 24 2023, Gjovik wrote to US DOL OSHA that she had sent them,
24 per their request, a document repointing them to information she already sent that they
25 apparently never reviewed, per the closing conference. The document “US DOL - Complaint
26 Addendum” included an email sent December 19 2021 with witnesses at the California
27 Department of Public Health who Gjovik talked to about the exposure next to Apple’s factory
28 (before she knew it was Apple) and about her office; another email sent January 11 2022 with
“events starting in Sept 2020 with Apple legal about another Superfund site that I think may
have been relevant to all this”; an email sent September 11 2022 with US EPA FOIA docs,
“EPA denies Northrop's proposed vapor intrusion mitigation plan as inadequate - Improvements
to the SSDS are required & not yet done; Indoor air testing is req before SSDS fixed.” On

1 January 20 2023 she had emailed OSHA saying, *“attaching email to city of Sunnyvale about the*
2 *HVAC in my office. It's become clear Apple knew they compromised the HVAC/SSD when they*
3 *installed it in 2015. Apple must have known we were being exposed to TCE since 2015.”* She
4 also included a spreadsheet she created of *“of Apple's numerous OSHA, EPA, & local health,*
5 *safety, hazardous materials, & haz waste violations in their California offices. This includes my*
6 *finding via PRA (attached) that Apple was subject to a haz waste/materials inspection by the city*
7 *in my office on the day I was fired & was cited for violations (more violations!) about my office*
8 *just a few hours before the Apple workplace violence interrogator contacted me to initiate my*
9 *termination.”* Gjovik also noted, *“EPA discovered not only were there concerns about the*
10 *cracked floor, and the HVAC, but that the Record of Decision was out of date & had to be*
11 *updated to comply with CERCLA obligations.”*

12 290. On February 24 2023, Gjovik also sent US DOL a 27-page document called
13 “Disputed Facts from Apple’s Position Statement.” On page 8 Gjovik noted that Apple framed
14 her complaints as only being about a “vapor intrusion study” at her office, and Gjovik wrote that
15 she “raised a number of concerns about Apple’s oversight of the TRW site” and noted the
16 problems with the sub-slab ventilation system, HVAC, slab, and more. On page 10 she
17 responded to a statement by Apple about their institutional control protocols at remediation sites
18 and noted: “Gjovik met with Apple’s new EH&S attorney in November 2020. She was
19 introduced through connections from her Apple legal internship & was seeking mentorship as
20 Gjovik was considering going into environmental law. Gjovik met with the attorney twice and
21 the attorney told her things like that she was on the side of big business & she thinks Erin
22 Brockovich is annoying. Gjovik shared what happened at her apartment & the lawyer told
23 Gjovik she recently joined Apple, Apple didn’t have an EH&S lawyer before, and Apple had not
24 been doing the testing & monitoring they should have been doing on these toxic waste sites.
25 Gjovik brought this up to Apple (Okpo) in July 2021 as part of the investigation & complained
26 about it in her business conduct complaint in August 2021. Gjovik also complained to several
27 coworkers about it earlier.”

28 291. On February 24 2023, in the Disputed Facts memo on page 10, Gjovik responded
to a statement from Apple saying, *“Ms. Gjovik began asking questions about the planned work,*
while alleging to have experienced hazardous vapor intrusion before at a non-Apple site.”
Gjovik wrote to OSHA, “This statement does a lot of work. It was recently revealed that Apple
had three industrial labs directly next to that apartment complex where Gjovik got sick in 2020,

1 and one is doing (what appears to be highly unlawfully zoned) semiconductor manufacturing
2 with an incredible amount of industrial chemicals & gases, a “gas bunker”, solvent exhaust &
3 evaporation pools, & other monstrosities we haven’t seen in the Valley since the 1980s. It even
4 had a chemical/gas leak in 2019, shortly before Gjovik moved in (0.2 miles away). Gjovik had
5 complained to Apple about the office in September 2020 & Apple’s EHS team encouraged
6 Gjovik to take a special “extreme condition leave” to move out the apartment more quickly.
7 Apple had been using the building for silicon fab starting around 2016, based on the permits
8 records.” Gjovik attached 3250 Scott Blvd building permits, chemical inventories, list of open
9 code violations, the 2019 phosphine leak report, and the emails between Gjovik and Apple in
10 2020 about the site. (Note this was 1 day after Gjovik discovered the nature of the 3250 Scott
11 Blvd site, so her report to OSHA was within 30 days).

11 292. On February 24 2023, Gjovik sent the Disputed Facts memo to OSHA which
12 included on page 21 under “Missing Facts”: “2020 September – Gjovik notifies Apple of her
13 illness from toxic waste at her apartment & the proximity of an Apple industrial office; Apple
14 tells her to take ‘extreme condition leave’ to move out” and “2020 November – Gjovik meets
15 with Apple EHS lawyer who tells her Apple had not been properly monitoring toxic waste
16 offices.”

16 293. On March 29 2023, Gjovik wrote to US DOL OSHA, “update on the 3250 Scott
17 situation (Apple's secret semiconductor manufacturing plant next to my apartments where I got
18 sick in 2020). I'm talking to the California EPA about what I found (Apple's reckless airborne
19 chemical releases & also apparent dumping) and the agency is interested in seeking enforcement
20 against Apple, as Apple was already under a California-wide toxic waste consent decree due
21 Apple's prior egregious hazardous waste violations & the government lawsuit that was settled in
22 2016. I strongly believe Apple knew it was the one to make me sick in 2020, as it was retaliating
23 against me & enacting the cover up in 2021+. I am working with the state agency to provide
24 them disclosures and information to facilitate that investigation and potential enforcement
25 actions, which may also include my office.”

25 294. On September 8 2023 Gjovik notified US DOL OSHA that she “kicked out” her
26 SOX claim to a civil RICO lawsuit. Also, from when Gjovik filed the first charge through when
27 OSHA dismissed the claims, Gjovik notified OSHA within 30 days of a number of additional
28 adverse actions including termination (September 2021), a retaliatory lawsuit (February 2022),
denylisting and harassment (January 2022, February 2022, March 2022), retaliatory reports to

1 law enforcement (February 2022), home break-in (June 2022, August 2022), surveillance
2 equipment in her home (June 2022), Apple directly interfering with a job opportunity (August
3 2022), and others.

4 VII. EMPLOYER LIABILITY

5 A. EMPLOYER'S KNOWLEDGE OF PROTECTED ACTIVITY

6 295. Gjovik complained to a supervisor and other agents of the employer, who were in
7 a position to address potential environmental violations.¹⁷⁸ Gjovik complained to a supervisor
8 and other agents of the employer, who were in a position to address potential environmental
9 violations.

10 296. Gjovik began contact with environmental agencies about 3250 Scott Blvd
11 ambient Air around September 3 2020, and Gjovik notified her Apple managers of her contact
12 with regulators at that time. Gjovik began contact with Apple EH&S about 3250 Scott Blvd on
13 September 8 2020. Gjovik began contact with Apple EH&S about her office at 825 Stewart
14 Drive on March 22 2021. Gjovik began contact with US EPA about her office at 825 Stewart
15 Drive on April 22 2021. Gjovik notified Apple of her contact with US EPA about her office
16 starting in April 2021 and through August 2021. Gjovik began threatening Apple she would talk
17 to the press about her office at 825 Stewart Drive in June 2021 and started getting published by
the press about her Apple complaints on July 23 2021 (New York Times).

18 297. Starting in March 2021, Gjovik complained about violations and possible
19 violations of environmental laws, as well as quality problems, which is all protected activity.¹⁷⁹
20 Gjovik did not need to be correct that there was or could be a violation, nor does Gjovik need to
21 prove there was a violation.¹⁸⁰ Apple knew about Gjovik's protected conduct through emails and
22 oral updates to Apple, through a formal complaint to Apple, through Gjovik's public statements

23 ¹⁷⁸ An informal and internal safety complaint may constitute protected activity. See, e.g., *Nichols v.*
24 *Bechtel Construction, Inc.*, Case No. 87-ERA-0044, Dec. and Order of Rem., Oct. 26, 1992, slip op. at 10
25 (employee's verbal questioning of foreman about safety procedures constituted protected activity), appeal
26 dismissed, No. 92-5176 (11th Cir. Dec. 18, 1992); *Dysert v. Westinghouse Electric Corp.*, Case No. 86-
27 ERA-39, Final Dec. and Order, Oct. 30, 1991, slip op. at 1, 3 (employee's complaints to team leader
protected). Internal safety complaints are covered under the environmental whistleblower statutes in the
Eighth Circuit, the Fifth Circuit and every other circuit); *David Hermanson v. Morrison Knudsen*
Corporation, Case No. 94-CER-2 (June 28, 1996).

28 ¹⁷⁹ *Kansas Gas & Elec. Co.*, 780 F.2d 1505, 1512 (10th Cir. 1985) *cert. denied*, 478 U.S. 1011, 106 S. Ct.
3311 (1986); *Mackowiak v. University Nuclear Sys., Inc.*, 735 F.2d 1159, 1162 (9th Cir. 1984).

¹⁸⁰ See *Yellow Freight Sys., Inc. v. Martin*, 954 F.2d 353, 357 (6th Cir. 1992). *Accord Richard*
Adams, No. 89-ERA-3 (Sec'y Aug. 5, 1992).

1 in news articles and on social media, and from at least two federal agencies who notified Apple
2 directly about Gjovik's complaints (US EPA and US NLRB).

3 298. In Apple's March 2022 position statement, Apple acknowledges Gjovik's
4 concerns about the cracked floor and confirms their position that they do not need to tell the US
5 EPA about a cracked slab. "Ms. Gjovik met with EHS and ER to discuss the voluntary plan to
6 preventatively seal potential pathways for vapor intrusion and to conduct air testing. EHS
7 assured Ms. Gjovik of the building's safety, explaining that measures were in place to mitigate
8 the potential for vapor intrusion. EHS again reviewed the three-step project announced in
9 February 2021 and explained it was part of Apple's regular maintenance, not due to concerns
10 regarding the safety of the building. EHS also explained that no EPA reporting was necessary
11 because Apple's planned work was routine and voluntary."

12 299. Where the Complainant informs a manager that he had contacted EPA officials
13 during a spills conference and confirmed that the Respondent should be reporting certain
14 emissions under CERCLA, the Complainant has engaged in protected activity.¹⁸¹

15 300. Further, Gjovik filed more complaints and discloses more information about her
16 suspicions Apple was violating environmental laws and posted it on her Twitter account prior to
17 her termination. Gjovik also used her "iCloud" email for most of her activities, which Apple
18 could read if it felt like it because it owned the servers. It is public information that Apple
19 employees have reported when they post on social media about Apple, they quickly hear from
20 Apple about it and a request to stop.¹⁸² The contents of a 2018 leaked Apple memo threatening
21 to file criminal charges against employee who "leak" was described by press as Apple's
22 "*aggressive surveillance of its own employees and intensive investigative efforts to catch and*
23 *punish leakers*" and added that "*Apple is notorious for its culture of secrecy.*"¹⁸³ Apple
24 pretending to be ignorant of Gjovik's social media activity and press interviews is absurd.

25 ¹⁸¹ *Dodd v. Polysar Latex*, 88-SWD-4 (Sec'y Sept. 22, 1994).

26 ¹⁸² The Verge, *Apple's fortress of secrecy is crumbling from the inside*, September 30 2021, ("multiple
27 employees tell The Verge that those who tweet about Apple quickly receive a note from the business
28 communications team asking to chat. They don't always get in trouble, but the message is clear: Apple
executives are watching.") <https://www.theverge.com/22700898/apple-company-culture-change-secrecy-employee-unrest>

¹⁸³ The Guardian, *Apple threatens leakers with criminal action in leaked memo – report*, April 13 2018,
<https://www.theguardian.com/technology/2018/apr/13/apple-memo-leaked-arrests-criminal-threat>

B. VICARIOUS LIABILITY

301. Claims and allegations against “Apple” are made broadly to include corporate liability for relevant actors as appropriate for each statute/law and circumstance, including: Respondeat superior (managers, corporate officers, employees); labor law’s “supervisor” theory; agency theory for agents (law firms, contracted service firms, those asked to do favors, those coerced to perform acts, employees, etc.).¹⁸⁴ Concurrently and in the alternative, Apple may be responsible via aiding, conspiring, inciting, orchestrating, negligence, condoning, ratifying, and other methods of vicarious liability for unlawful conduct noted, which will be argued in detail where appropriate during the trial. An admission by an agent within the scope of his employment is admissible.¹⁸⁵

302. Apple is liable for harassment (threats, intimidation, defamation, humiliation, etc.) against Gjovik by Gjovik’s coworkers, and even by anonymous actions, because Apple ratified the tortious acts, and/or Apple subsequently ratified the originally unauthorized tortious acts.¹⁸⁶ Apple was aware of the harassment and failed to take steps to investigate or address it.¹⁸⁷ The press even published articles describing Gjovik’s coworkers harassing Gjovik about her whistleblowing, articles which Apple was asked to comment on by the reporters.¹⁸⁸ While knowing of systemic issues, Apple failed to respond to complaints about harassment of Gjovik, affirmatively refused to address Gjovik’s complaints about harassment, failed to discipline or terminate those who were harassing Gjovik, concealed and covered-up the source of harassment, failed to provide a system for registering complaints of harassment of Gjovik, and even discouraged complaints of harassment of Gjovik from being filed.¹⁸⁹

¹⁸⁴ Cal. Lab. Code § 1104; *Persson v. Smart Inventions, Inc.*, 125 Cal.App.4th 1141, 1167 (2005); 5 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 32, p. 94.

¹⁸⁵ See *Breneman v. Kennecott Corp.*, 799 F.2d 470 (9th Cir.1986); *Godwin v. Hunt Wesson, Inc.*, 150 F.3d 1217, 1221 (9th Cir. 1998), as amended (Aug. 11, 1998).

¹⁸⁶ *C.R. v. Tenet Healthcare Corp.*, 169 Cal.App.4th 1094, 1110 (2009), *Ventura v. ABM Indus. Inc.*, B231817 (Cal. App. Dec 20, 2012); *Murillo v. Rite Stuff Foods, Inc.*, 65 Cal.App.4th 833, 852 (1998); *Shultz Steel Co. v. Hartford Accident & Indemnity Co.*, 187 Cal.App.3d 513 (1986).

¹⁸⁷ *Id.*; 29 C.F.R. § 1604.11(d); *Porter v. Erie Foods Int’l, Inc.*, 576 F.3d 629, 636 (7th Cir. 2009); *EEOC v. Prospect Airport Servs., Inc.*, 621 F.3d 991, 1001 (9th Cir. 2010); [Pryor v. United Air Lines, Inc., 791 F.3d 488 \(4th Cir. 2015\)](#).

¹⁸⁸ The Verge, Apple’s fortress of secrecy is crumbling from the inside, September 30 2021 (“After Gjovik started to gain momentum on Twitter, multiple current and former Apple employees tweeted about how they were suspicious of her claims and felt like she was merely trying to get attention.”)

¹⁸⁹ *Vance v. Ball State University*, 133 S. Ct. 2434 (2013); US EEOC, Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors, EEOC-CVG-1999-2 (1999); *City of Los Angeles v. Superior Court*, 33 Cal.App.3d 778, 782-783 (1973); *Coats v. Construction & Gen. Laborers Local No.*

303. The named parties were Apple's agents and employees, and those named were acting within the scope of her/his/their agency and/or employment when he/she/they harmed Gjovik.¹⁹⁰ The named parties conspired with Apple, and were aided and incited by Apple, and Apple condoned and ratified their conduct against Gjovik.¹⁹¹ Even if named parties' conduct was unauthorized by Apple Inc, it is still within the scope of employment and/or authorization because the conduct was committed in the course of a series of acts authorized by the employer and the conduct arose from a risk inherent in and/or created by Apple Inc.¹⁹²

304. Actions taken by agents and servants of Apple, against Gjovik, outside work hours and facially appearing recreational, are still within the scope of employment and/or agency because they were carried out with the employer's stated and/or implied permission, they provided a benefit to the employer, they were ratified or condoned, and/or because they had become customary.¹⁹³

305. Where any statute of limitations is in question of possibly being expired for an alleged claim, Gjovik, where reasonable, will argue the statute of limitations should be tolled due to Apple's fraudulent concealment of numerous material facts in this case. A significant amount of new evidence and facts came to light after initial charges were filed and initial investigations conducted. Gjovik will also argue, where applicable, the doctrine of continuing violations.¹⁹⁴

VIII. ALLEGED RETALIATION

306. Apple took adverse actions against Gjovik following Gjovik's protected activity and with knowledge of Gjovik's protected activity. Apple's adverse actions occurred with close

185, 15 Cal.App.3d 908, 914 (1971); *C.R. v. Tenet Healthcare Corp.*, 169 Cal.App.4th 1094, (Cal. App. 2009).

¹⁹⁰ Judicial Council of California Civil Jury Instructions (2020 edition), 3701 *Tort Liability Asserted Against Principal*, <https://www.justia.com/trials-litigation/docs/caci/3700/3701/>

¹⁹¹ *Rood v. County of Santa Clara*, 113 Cal.App.4th 549, 571 (2003); *Golceff v. Sugarman*, 36 Cal.2d 152, 154 (1950); *Alvarez v. Felker Mfg. Co.*, 230 Cal.App.2d 987, 997 (1964).

¹⁹² Judicial Council of California Civil Jury Instructions (2020 edition), *CACI No. 3722. Scope of Employment - Unauthorized Acts*, <https://www.justia.com/trials-litigation/docs/caci/3700/3722/>

¹⁹³ Judicial Council of California Civil Jury Instructions (2020 edition), *CACI No. 3724. Social or Recreational Activities*, <https://www.justia.com/trials-litigation/docs/caci/3700/3724/>

¹⁹⁴ Gjovik's excited utterance upon discovery on February 21, 2023, "APPLE IS DOING LITERAL ACTUAL ***** SILICON FAB 0.2 MILES (0.3 KM) FROM THE APARTMENT WHERE I GOT SO SICK I THOUGHT I WAS DYING & APPLE VENTED THAT **** INTO THE AIR FROM THEIR ROOF & THE YARD NEXT TO THEIR "GAS BUNKERS" RIGHT INTO MY 3RD FLOOR APARTMENT" <https://twitter.com/ashleygjovik/status/1628250591779516416>

temporal proximity to Gjovik’s protected activity and after Gjovik’s protected activity, Apple exhibited evidence of hostility towards Gjovik’s protected activity, Apple took disparate treatment towards Gjovik compared to other employees, and there are indicators that Apple’s stated reasons for the adverse activity are pretext (post hoc rationalization, shifting explanations, implausible reasoning, etc.).

307. Adverse action is action taken by an employer that a reasonable employee would have found to be “materially” adverse and capable of “dissuad[ing] a reasonable worker from making or supporting a charge of discrimination.”¹⁹⁵ A Respondent is liable for the harassing conduct of a complainant’s coworkers or supervisors if the Employer knew, or in the exercise of reasonable care, should have known of the harassment and failed to take prompt remedial action.¹⁹⁶

308. Gjovik complained of retaliation to Apple in writing starting around April 2021 and escalating in June 2021, before escalating further after. Gjovik sent Lagares an email on July 8 2021 with a list of events she titled “Timeline of Raising Formal Concerns within PSQ.” The list included protected activities, adverse actions, and allegations of retaliation. Gjovik repeated allegations of retaliation in her August 23 2021 Issue Confirmation she sent Okpo.

309. Gjovik’s US DOL March 2022 Complaint listed and detailed the following adverse employment actions: Hostile Work Environment; Nonsensical Sexism Investigation; Constructive Termination; Increase in Unfavorable Work; Indefinite Administrative Leave; Denied Training/Benefit; Suspension of Account Access; Defamation by Publication; Mailing Her Threatening Communications (her broken chattels); Termination; Defamation & Trade Libel by Reason of Termination; Post-Employment Threats, Harassment, Coercement, Blacklisting; Retaliatory Litigation; Retaliatory Reports to Law Enforcement; Denial of Unemployment Benefits. Pg 115-116

A. HOSTILE WORK ENVIRONMENT

310. To establish a hostile environment, harassment must be “so severe or pervasive” as to “alter the conditions of the victim's employment and create an abusive working

¹⁹⁵ *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 58 (2006); *Powers v. Paper*, No. 04-111, slip op. at 13 (ARB Aug. 31, 2007); *Rochon v. Gonzalez*, 438 F.3d 1211, 1219 (D.C. Cir. 2006).

¹⁹⁶ *Raymond L. Schlagel v Dow Corning Corporation*, Slip Op. at page 55. ARB CASE NO. 02-092, ALJ CASE NO. 01-CER-1, April 30, 2004.

environment.”¹⁹⁷ Prior to her termination, and for some time, Apple had created and maintained an abuse and hostile work environment for Gjovik. Gjovik has been actively looking for a new role at Apple, interviewing with several teams, and telling West and Powers that she was doing so.¹⁹⁸ While some roles fell through (headcount canceled, etc.), other roles were expressly blocked by West.

311. The harassment Gjovik suffered would have detrimentally affected a reasonable person and did detrimentally affect Gjovik.¹⁹⁹ The discriminatory conduct was frequent, pervasive, and severe; Gjovik suffered humiliation and harassment that unreasonably interfered with Gjovik’s ability to do her job. The harassment included abuse and threats of abuse that seriously scared and harassed Gjovik for not legitimate or lawful reasons.²⁰⁰ The Hostile Work Environment Gjovik was subject to included, and attacking and ridiculing the Complainant for her protected activity.²⁰¹ Hostile Work Environments may include slander, innuendo and breaches of privacy and confidence to impugn Complainant’s reputation.²⁰²

312. In addition to the following discrete adverse actions, Complainant also pleads the doctrine of continuing violations and claims she was subject to a Hostile Work Environment at Apple starting before 2020 and lasting past her termination, running concurrent with the 30 days of her first Complaint and severe discrete adverse actions, including at least one adverse action occurring during that 30 day period.²⁰³ The statute of limitations is tolled for discrete adverse action that occurred as part of this unlawful Hostile Work Environment and continuing pattern of retaliatory conduct.²⁰⁴

313. Overlapping examples include but are not limited to, on April 9 2021, Gjovik again raised concerns directly to West about Powers. She reminded him that she had been struggling with

¹⁹⁷ *Fisher v. San Pedro Peninsula Hosp.* (1989) 214 CA3d 590, 608, 262 CR 842, 851 (adopting federal case law for hostile environment sexual harassment claims under California law); *Alexander v. Community Hosp. of Long Beach* (2020) 46 CA5th 238, 262, 259 CR3d 340, 364

¹⁹⁸ Gjovik’s 2020 annual performance review self-assessment noted under goals that she would “Continue to look for opps @ Apple with a legal/policy focus. In the meantime, appreciate any projects that focus on strategy, comms, research, or implementing new policy (transferable to next phase of career).”

¹⁹⁹ California Courts, *Understanding Harassment Laws*, <https://www.courts.ca.gov/1258.htm>

²⁰¹ *Varnadore v. Oak Ridge National Laboratory*, 92- CAA-2, 5 and 93-CAA-1 (ALJ June 7, 1993).

²⁰² *Hall v. U.S. Army, Dugway Proving Ground*, pg50, 1997-SDW-5 (ALJ Aug. 8, 2002).

²⁰³ *Jenkins v. United States Environmental Protection Agency*, ARB No. 98 146, ALJ No. 1988 SWD 2 (ARB Feb. 28, 2003); *Belt v. United States Enrichment Corp.*, ARB No. 02 117, ALJ No. 2001 ERA 19 (ARB Feb. 26, 2004).

²⁰⁴ *National Railroad Passenger Corp. v. Morgan*, 536 US 101, 122 S Ct 2061, 153 L Ed 2d 106 (2002); *Schlagel v. Dow Corning Corp.*, ARB No. 02-092, ALJ No. 2001-CER-1 (ARB Apr. 30, 2004).

1 PTSD and told him that after her article was published about her apartment last year, more victims
2 came forward, and she had been crying all day, but Mr. Powers was snapping at her and unfairly
3 loading her up on projects. Later, Gjovik complained to Apple Employee Relations (Lagares) that
4 on April 14 2021 “Dave snapped at me during my I&D training and a witness confirmed it was
5 inappropriate, and I notified Jenna...I email Dan and tell him I want to report to him or John,
6 and go to a 4-work day schedule —otherwise I’ll quit his org. I mentioned again specifically my
7 2020 review feedback about Dave I sent him and working for Dave “is TERRIBLE for my
8 mental health.”²⁰⁵ On July 4 2021, Gjovik emailed Lagares complaining that Helen Polkes was
9 acting “bizarrely adversarial”, “she’s been telling me I need to deal better with ambiguity”, and
10 “saying things to make me feel like everything about my concerns about Dave & my role are my
11 own fault.”²⁰⁶ Gjovik complained Helen was acting “condescending and like she was trying to
12 start an argument, or otherwise intimidate me.” In July 2021, Gjovik complained to Lagares that
13 West has responded to her providing him feedback about his inappropriate behavior by referring
14 to her providing feedback to him with: “*I guess sometimes when you invite dogs on the couch*
15 *you get fleas.*” This was also in the Issue Confirmation (pg19).

16 314. In Okpo’s Aug 16 2021 Issue Confirmation, Okpo wrote, “You mentioned that
17 you shared your concerns with Powers about how Ivan treats you, but you don’t believe Powers
18 has done anything about it. Powers told you to smile, stay calm and keep a straight face when
19 men treat you bad at work. You shared that you told Powers and West about Ivan's behavior, and
20 they laughed and mentioned that Ivan made another woman quit ([B.K.]), and that you shouldn’t
21 tell anyone about it.” Gjovik’s August 23 2021 revised version of Issue Confirmation,
22 specifically reports a “Hostile Work Environment” and “Failure to Resolve Hostile Work
23 Environment.” (pg15).

24 **B. CONSTRUCTIVE TERMINATION (2021, #1)**

25 315. Constructive discharge occurs when the employer's conduct effectively forces an
26 employee to resign because "under all the circumstances, the working conditions are so
27 unusually adverse that a reasonable employee in plaintiff's position would have felt compelled to
28 resign."²⁰⁷ The requisite knowledge or intent must be on the part of the employer or those who

²⁰⁵ Ashley Gjovik email to Antonio Lagares; Date: July 8 2021 3:14pm; Subject: *Re: Introduction; Hle*

²⁰⁶ Ashley Gjovik email to Antonio Lagares; Date: July 4 2021 5:37pm; Subject: *Introduction*

²⁰⁷ *Turner v. Anheuser-Busch, Inc.*, 7 Cal 4th 1238, 1256, 32 Cal. Rptr. 2d 223, 876 P.2d 1022 (1994).

1 “effectively represent the employer, i.e., its officers, directors, managing agents, or supervisory
2 employees.”²⁰⁸

3 316. Gjovik’s role under David Powers and Dan West had been a hostile work
4 environment for some time, with repeated escalations to Dan West about it and requesting him to
5 help, as well as numerous attempts to transfer to other teams at Apple. During this time, Dan
6 West repeatedly blocked Gjovik’s ability to transfer to a different team without coherent
7 explanation, while also refusing to resolve Gjovik’s complaints about a hostile work
8 environment.

9 317. The escalation of harassment and retaliation in March and April 2021, due to
10 Gjovik’s protected activity, relocated Gjovik’s position from the frying pan and instead straight
11 into the fire, with Apple’s Employee Relations and Human Resources teams gleefully adding
12 kindling as they further provoked her managers, coworkers, and leadership at the company about
13 her. On April 29 2021, when Gjovik complained again of the ongoing hostile work environment,
14 and now the new harassment and retaliation, and the unsafe work conditions, Dan West refused
15 to do anything to help. Gjovik said if he did nothing and continued to block her transfers she
16 would have to quit, and West agreed then she should just quit Apple. Although the employee
17 may say, “*I quit*,” the employment relationship is actually severed by the employer's acts against
18 the employee's will. As a result, a constructive discharge is legally regarded as a firing by the
19 employer rather than a voluntary resignation or retirement by the employee.²⁰⁹

20 318. In determining whether a reasonable employee would feel compelled to resign,
21 courts consider such factors as: reassignment to menial or degrading work; badgering,
22 harassment or humiliation by the employer calculated to encourage the employee to resign;
23 offers of continued employment on terms less favorable than the employee's former status.²¹⁰
24 Intolerable working conditions are those which either are unusually aggravated, or amount to a
25 continuous pattern of objectionable conduct.²¹¹

26 ²⁰⁸ *Turner v. Anheuser-Busch, Inc.*, supra, 7 C4th at 1251, 32 CR2d at 230 (emphasis added); *Ortiz v.*
27 *Dameron Hosp. Ass’n* (2019) 37 CA5th 568, 579, 250 CR3d 1, 10—evidence that supervisory employee
28 intentionally created working conditions leading to plaintiff’s resignation sufficient to impute knowledge
to employer.

²⁰⁹ *Turner v. Anheuser-Busch, Inc.*, supra, 7 C4th at 1244-1245, 32 CR2d at 226; *Thompson v. Tracor*
Flight Systems, Inc. (2001) 86 CA4th 1156, 1166, 104 CR2d 95, 102.

²¹⁰ See *Brown v. Kinney Shoe Corp.* (5th Cir. 2001) 237 F3d 556, 566; *Constructive Discharge*, Cal. Prac.
Guide Employment Litigation Ch. 4-G.

²¹¹ *Turner v. Anheuser-Busch, Inc.*, supra, 7 C4th at 1246-1247, 32 CR2d at 227-228; *Thompson v.*
Tracor Flight Systems, Inc. (2001) 86 CA4th 1156, 1171-1172, 104 CR2d 95, 106—continuous course of
harassment, uncorrected by management, can constitute objectively intolerable working conditions.

1 319. Apple (via Jenna Waibel) used a sham and nonconsensual sexism investigation to
2 create an extremely hostile work environment for Gjovik with her two managers, and with some
3 of the other leaders she had to work with, and with Human Resources. In response to this and to
4 Gjovik's continued protected activity, Gjovik's managers then began reassigning her work to
5 other people, dramatically increasing her workload with unfavorable projects, harassing her and
6 threatening discipline through "warnings" (David Powers, March 2021) about her exercising her
7 rights, while also denying requests for transfers and instead telling her she "can just quit" (Dan
8 West, April 29 2021).

9 320. Gjovik notified numerous people in positions of authority of the intolerable
10 conditions, so Apple was aware of what happened and did nothing, or intentionally made it
11 worse. Gjovik notified Apple of constructive discharge starting in April of 2021, again in May,
12 June, July, August, and September 2021.²¹²

13 321. Gjovik reported to Waibel, and then also Okpo and Lagares, that on April 29
14 2021 Gjovik had asked West to intervene and fix the hostile work environment but he declined.
15 She told them she told West she felt it was a "*hostile work env*" that was "*severely detrimental to*
16 *[her] mental health.*" She reported West's response was saying her complaints "*weren't*
17 *actionable*" and claimed she is just "*hot and cold*" about Powers. Gjovik asked again to be
18 transferred to another manager, but West said no. West has also blocked Gjovik's attempted to
19 transfer in January 2021. Gjovik told them West would not give her an explanation why he
20 would not help. She said, "*I told him I will likely have to leave PSQ or Apple if he doesn't*
21 *response the issue, and he said that's fine. I asked what he will do with my role if I leave and he*
22 *said he'd cancel the EPM role, that 'its an experiment that didn't work out,' and convert it to*
23 *engineering headcount.*"²¹³ Okpo's Issue Confirmation on August 16 2021 confirmed this report
24 and added, "[Gjovik] also told [Okpo] that during the same conversation, West told [her] to quit
25 Apple. [Gjovik] shared that West has since stopped meeting with [her] and has reassigned [her]
26 job responsibilities to others. (Pg21)

27 322. Gjovik complained to Lagares in July 2021, that "*it feels like [she is] not only*
28 *being harassed by my manager and my HR BP, but it appears there's a conspiracy to force*
[her] back into what appears to be a very physically unsafe office building. [She] thought what

²¹² *Turner v. Anheuser-Busch, Inc.*, supra, 7 C4th at 1250, 32 CR2d at 230.

²¹³ Ashley Gjovik email to Antonio Lagares; Date: July 8 2021 3:14pm; Subject: *Re: Introduction; Hle*

1 *[she] went through [in 2020] was bad, but this year has turned into another nightmare — & this*
2 *time, it's Apple doing.”*²¹⁴

3 **C. SHAM INVESTIGATION (#1, APRIL-JUNE 2021)**

4 323. Gjovik complained before, during, and after that she did not want Waibel to
5 investigate West or Powers for sexism and discrimination, and that it would only cause
6 retaliation. Concurrently Waibel refused to talk to Powers about Gjovik's labor rights complaints
7 and “*someone can talk to him and explain labor laws, etc.*”. On April 9 2021, Gjovik asked:
8 “*Favor to ask of you: that script that [Steiger] read — about there being no prohibitions on*
9 *Apple employees speaking out about concerns related to workplace conditions, & no retaliation*
10 *for speaking out either — was really great. Any chance you could send me a written version I*
11 *can forward to my manager?”* [Note: Gjovik asked for this repeatedly and Apple would never
12 share it or anything like it with Gjovik in writing.]

13 324. Instead, Waibel used the investigation into West and Powers to agitate them and
14 other leaders about Gjovik, which quickly increased the retaliation and hostility against her. The
15 investigation included sex and disability discrimination by West and Powers, sexual harassment
16 by another Director, and racial discrimination by the almost entirely white-male management
17 team under Powers with one manager complaining Gjovik spoke out “*equal outcomes*” when the
18 focus needs to be “*equal opportunities*,” and another complaining Gjovik's I&D trainings were
19 “*too hard on the white man.*”

20 325. Gjovik told Waibel she did not want a sexism/discrimination investigation on
21 April 9 2021 and Waibel acted like she may drop it until Gjovik raised safety concerns about her
22 office again on April 12 2021, at which point Waibel asked a list of witnesses for the sexism
23 investigation she is now opening. She said, “*please let me know if there are any witnesses you*
24 *would recommend I speak with, in addition to talking to Dave directly.*”²¹⁵ Waibel added, “*I'm*
25 *going to set up some time to talk with Dave and get his perspective.*” Gjovik repeatedly said she
26 did not want this and it did lead to retaliation.

27 326. Gjovik also complained before, during, and after about Polkes bizarre insistence
28 that Gjovik file a worker's compensation claim about her fainting spell at her office in 2019
which she now believed to be due to vapor intrusion. The claim was then abruptly closed despite

²¹⁴ Ashley Gjovik email to Antonio Lagares; Date: July 8 2021 3:14pm; Subject: *Re: Introduction; Hle*

²¹⁵ Ashley Gjovik email to Antonio Lagares; Date: July 8 2021 3:14pm; Subject: *Re: Introduction; Hle*

1 the benefits administrator saying it would be open for several months. Then Waibel insisted
2 Gjovik file ADA accommodations about the vapor intrusion, which again Gjovik complained
3 about before, during, and after.²¹⁶

4 327. Gjovik reported to Lagares, that in April 27 2021, had a phone call with Waibel
5 asking again if she talked to Powers about letting Gjovik talk about the Superfund site with
6 coworkers, and instead Waibel provides Gjovik a five-point balancing test if Gjovik wants to
7 talk to anyone about Superfund sites or workplace safety related to Apple offices. Gjovik also
8 noted: *“During that call I also started crying and pleaded with her to stop the investigation*
9 *because the way it’s going it seems like she’s going to side with my manager and Dan and only*
10 *get me in trouble. She says she can’t cancel and investigation after it begins.*²¹⁷ This was all
11 captured in the Issue Confirmation as well. On May 20 2021, Waibel told a Gjovik she told a
12 Director that Gjovik accused him of sexual harassment and Waibel also asked to speak to one of
13 Gjovik’s friends who was in the US on an H1B visa. Gjovik expressed concerns about her facing
14 retaliation too, even deportation, but Waibel persisted. [Note: Gjovik’s friend no longer lives in
15 the US, despite having a Permanent Residence card application underway sponsored by Apple at
16 that time.]

17 328. Waibel held a wrap-up call with Gjovik on June 3 2021 where she said she found
18 no policy violations and the next steps are for Gjovik “to process this” and work with the HR
19 Business Partner on her “path forward.” Gjovik complained there wasn’t an investigation and
20 she will just face retaliation now. Waibel and Powers then made Gjovik present at West’s staff
21 meeting on Gjovik’s first day back after the investigation, on how successful Powers’
22 organization is with Inclusion & Diversity. Gjovik complained about this to Lagares and Okpo
23 later. On June 10 2021, Powers tells Gjovik he doesn’t think he did anything wrong. Waibel said
24 Gjovik has no other options now but to complain to Waibel’s manager (Lagares). Waibel also
25 instructs Gjovik she is not to discuss any details of the investigation, even though it closed. She
26 also suggested ADA accommodations for the Superfund vapor intrusion.²¹⁸

27 329. Okpo’s Issue Confirmation captured this saying, *“You mentioned that after*
28 *Waibel completed her investigation on June 10, 2021, Powers told you that there was no reason*
29 *for him to receive coaching, and the focus was now on you to change yourself.”* (pg16) Lagares

30 ²¹⁶ Ashley Gjovik email to Antonio Lagares; Date: July 8 2021 3:14pm; Subject: *Re: Introduction; Hle*

31 ²¹⁷ Ashley Gjovik email to Antonio Lagares; Date: July 8 2021 3:14pm; Subject: *Re: Introduction; Hle*

32 ²¹⁸ Ashley Gjovik email to Antonio Lagares; Date: July 8 2021 3:14pm; Subject: *Re: Introduction; Hle*

1 contacted Gjovik on June 10 2021 and Gjovik then started complaining to Lagares.²¹⁹ Gjovik
2 met with Lagares, Gjovik complained if they already destroyed her career they should have to
3 actually investigate everything, and she was talking to the press. Lagares agreed to have another
4 investigator do a second review. On June 22 2021 Gjovik sent some examples to Lagares of
5 other issues.²²⁰ Gjovik texted a coworker, a Senior Manager in West's org after, telling her the
6 investigation was reopened and when the coworker asked why, Gjovik replied: "I complained
7 that they were being a bunch of corporate tools and threatened to talk to the press about working
8 in a physically & emotionally toxic workplace."

9 330. On June 30 2021, Gjovik emailed Lagares complaining of retaliation. She wrote:
10 "turns out my instinct was right and my manager, David, has continued with more inappropriate
11 and offensive comments following the completion of Jenna's investigation. I've been sharing
12 some updates with Helen to see if she can help reign him in. It really does feel like he was
13 emboldened by whatever Jenna said to him, or whatever he interpreted Jenna said to him. He
14 seems to think he's completely justified in all the biased and sexist stuff he said/says — and is
15 really on a tear now. I really don't know how I'm going to be able to continue. As mentioned, I
16 don't want to quit Apple yet but I'm too close to graduating & pass the Bar exam to transfer to
17 another role. And because Dan refused to move me to any other managers in PSQ, I'm stuck
18 with Dave and the stuff he continues to inflict upon me. It's miserable."²²¹

19 331. On July 28 2021, Gjovik complained to Lagares and Okpo that once Waibel stuck
20 Gjovik on leave, she never followed up with Gjovik again, did not ask questions, did not ask for
21 more evidence and "there was zero follow up questions from anything I sent her." Gjovik wrote
22 it was "clear to [her] Waibel didn't look into most of the stuff [Gjovik] sent her."

23 332. On July 29 2021, Gjovik complained to Lagares and Okpo about Waibel's sham
24 investigation and their refusal to confirm what they will or will not investigate. Gjovik wrote:
25 "*What I'd like to ask from y'all after you two chat, is for ER to provide me a list of the items*
26 *which Jenna investigated and closed out finding there were "no Apple policy violations" and no*
27 *action would be taken. I think we should get this from Jenna before Ekelemchi and I complete*
28 *this pre-discovery phase — since if there's things she didn't close out, I want to ensure*
Ekelemchi looks at those — and it's very unclear what she did or did not actually investigate."

²¹⁹ Antonio Lagares email to Ashley Gjovik; Date: June 10 2021 4:58pm; Subject: *Introduction*

²²⁰ Ashley Gjovik email to Antonio Lagares; Date: July 8 2021 3:14pm; Subject: *Re: Introduction; Hle*

²²¹ Ashley Gjovik email to Antonio Lagares; Date: June 30 2021 11:14am; Subject: *Introduction*

1 Okpo and Lagares refused. Gjovik eventually got a list from Okpo during a meeting and wrote it
2 herself and sent it to them to confirm.

3 **D. INCREASE IN WORKLOAD / UNFAVORABLE PROJECT ASSIGNMENTS**

4 333. Gjovik complained to Apple Employee Relations (Lagares) that on April 8 2021,
5 “After telling Dave numerous times I’ve suffering from severe PTSD from getting sick last year
6 and ‘barely hanging on’ he texts me and asks me to lead a huge project for a completely
7 different org, dotted-line reporting to a SWE director who sexually harassed me in 2019 (which
8 Dave knows about).”²²² Gjovik also included this in her August 23 2021 “Issue Confirmation”.
9 (Pg15).

10 334. On July 15 2021, Powers attempted to dramatically increase Gjovik’s workload,
11 all with unfavorable projects. Powers had created Keynote slide deck about it and Gjovik argued
12 with him during the meeting that none of it made sense and she could not do all that work, but
13 Powers told her he was already talking to the teams about her doing the work. Powers sent the
14 slides, and Gjovik responded saying again” all of this work appears to already have other people
15 in our org or different orgs who have this work/scope in their category 1s. Also discussed, I’m
16 concerned about this quadrupling my workload and if I was to take this on... I would have to
quit Apple.” Gjovik sent this to Okpo and Lagares.

17 335. Gjovik noted this change to her assignments in her July 18 2021 weekly status to
18 the managers under Powers and Powers then texted Gjovik complaining same day, on a Sunday.
19 Powers told Gjovik he did not want her to tell anyone what he was doing to her. Gjovik replied
20 complaining he was “harassing her” in her personal time and it was “retaliation.”

21 336. On July 21 2021, one of the managers, Pete, contacted Gjovik about the change in
22 her workload saying there were “a lot of red flags” and he is “worried about [her].” She also
23 told another coworker about it, Mike, who responded: “Did you ask him for a timeline of when
you will get the extra headcount to hire your team?” Gjovik replied: “yeah no.”

24 337. In Okpo’s August 16 2021 Issue Confirmation he reported: ‘You also believe that
25 Powers is retaliating against you by assigning you work that is a substantial increase from your
26 previous responsibilities, and five new large assignments are deeply unfavorable.’ (Pg17)

27 338. As in *Zilmer*, when Apple ‘quadrupled’ Gjovik’s workload, Apple knew Gjovik
28 could not take on the workload and the increase was false and pretextual, creating a wrongful

²²² Ashley Gjovik email to Antonio Lagares; Date: July 8 2021 3:14pm; Subject: *Re: Introduction; Hle*

1 constructive discharge.²²³ Similarly, as in *Colores*, frequent reorganization of Gjovik’s duties
2 along with frequent attempts to invent pretextual documents and unlawful demands is a
3 wrongful constructive discharge especially as Apple knew its actions would create stress that
4 would exacerbate Gjovik’s medical conditions (PTSD, anxiety, etc.).²²⁴

5 **E. REASSIGNMENT**

6 339. In May 2021, Powers began reassigning Gjovik’s work to other people without
7 telling (or consulting) Gjovik. These were high-visibility projects that were cited in Gjovik’s
8 performance reviews for “Results” and impact.

9 340. On July 8 2021, Gjovik complained to Apple Employee Relations (Lagares) that
10 she had just discovered West has been reassigning her projects. Gjovik wrote:

11 Unfortunately there’s another new event— I just found out today. In May,
12 apparently Dan and Dave decided to reduce my ownership and supervision of one
13 of my main projects and appear to have handed it off to a male colleague in
14 another organization (Daniel) — and didn’t even tell me directly. Dan reduced
15 my supervision & gave Daniel the project after I started raising formal concerns
16 to him about Dave creating a hostile work env & be sexist, raising workplace
17 safety concerns, and filed a workers comp claim. I’ve been the sole owner of the
18 process, editing, approval, and publishing of our “How I Got Here” career
19 spotlight articles for over two years. I’ve also been the co-owner (with Dan) of
20 the From the Desk of Articles for a year as well. It appears Dan made the decision
21 to reduce my role to only working on MSQ articles and appears to have given
22 Daniel broader responsibility than me during a staff meeting I wasn’t invited to
23 — and no one told me until I saw the email from Yuan today. Yuan also insisted
24 I was at the staff meeting, when I wasn’t.²²⁵

25 **F. CONSTRUCTIVE TERMINATION (2021, #2)**

26 341. Apple reassigned Gjovik’s projects, gave her unfavorable work, gave her
27 increased workload, and opened fake investigations on her behalf solely to incite retaliation.²²⁶
28 Apple used Employee Relation investigators to open fake investigations intended to upset
Gjovik’s management and coworkers in hope that Gjovik quits. The same team also abused

²²³ *Zilmer v. Carnation Co.* (1989) 215 CA3d 29, 38-39, 263 CR 422, 426-427 (disapproved on other grounds by *Turner v. Anheuser-Busch, Inc.*, supra, 7 C4th at 1251, 32 CR2d at 230).

²²⁴ *Colores v. Board of Trustees of Calif. State Univ.*, supra, 105 CA4th at 1310, 130 CR2d at 360.

²²⁵ Ashley Gjovik email to Antonio Lagares; Date: July 8 2021 3:14pm; Subject: *Re: Introduction; Hle*

²²⁶ *Simers v. Los Angeles Times Communications, LLC* (2018) 18 Cal.App.5th 1248, 1279 [227 Cal.Rptr.3d 695; *Coszalter v. City of Salem*, 320 F.3d 968, 976 (9th Cir. 2003).

1 ADA and FMLA processes as vehicles for innovation retaliation tactics, which is deeply
2 disrespectful to the Congressional intent for those statutes.

3 342. Okpo repeatedly told Gjovik that everything they discussed was ‘confidential.’
4 Gjovik, annoyed with Okpo’s misleading posture, eventually complained to Okpo that he was
5 attempting to mislead her that he would not share what she said with Apple management or
6 legal, at which point Okpo then looked shocked and forlorn that Gjovik actually knew her legal
7 rights, and at which point then confirm the conversation was not confidential between the two of
8 them. Gjovik also complained to Okpo that he was a lawyer and was acting like he was her
9 lawyer, but he represents the corporation, at which point Okpo finally provided a long overdue
10 Upjohn warning.²²⁷

11 343. In July 2021, Gjovik repeatedly complained to Lagares, Okpo, and Polkes about
12 her increased workload, the unfavorable projects, the reassignment, the hostility and harassment,
13 the misuse of ADA and FMLA processes, the sham investigation, and an apparent systemic
14 culture of retaliation and cover-ups at the company. Gjovik complained that after everything
15 they’ve done to her, her career at Apple is over, however she told them she refused to quit and if
16 they want her gone, Apple has to fire her. Gjovik also kept asking questions and raising concerns
17 about her office, and Apple would not respond to her in a meaningful way.

18 344. On July 27 2021, Gjovik emailed Okpo and Lagares saying:

19 Also as mentioned, I’m still looking for a short-term response to mitigate the current
20 hostile work environment I’m experiencing reporting to Dave and Dan and Helen. I’ve
21 asked several times now, including today, that all 1:1s with them be in writing only,
22 during the duration of this investigation. I also asked that there not be any new projects
23 added to my workload during the duration of this investigation, and this is especially
24 important now that my manager decided to substantially increase the amount of work
25 I need to do beyond what a single role is capable of, and all unfavorable work. I would
26 like for him not to add any new work beyond what I had a month ago. I do see his
27 current actions with this workload as retaliation and a negative employment action.
Also, as I’ve mentioned, I am actively suffering emotional harm as I’m continued to be
exposed to their behavior. I look forward to hearing about next steps on this. Further,
as mentioned previously and on going, I am requesting a long-term solution to the
hostile work environment and unsafe work conditions. At this point it is clear my team
will not stop the sexism, harassment, discrimination, and retaliation — so I need to be
removed from this situation. As mentioned, I refuse to quit or to take medical leave as

28 ²²⁷ *Upjohn Co. v. United States*, 449 U.S. 383 (1981) – (If an attorney is conducting the investigation, the attorney should provide the employees with an Upjohn warning explaining that the attorney represents the company, not the employee)

1 a response to the hostility; this is on Apple ER to resolve, not for me to hide from.
2 There are two options we've discussed. First, a new role at Apple that is not a hostile
3 work environment and not in unsafe work conditions (and I mentioned that because I
4 will not be at Apple after Dec 31 2022, I cannot find a new role to transfer to for such
5 a short period of time, so I need your assistance with placement). The 2nd option is an
6 exit package that will compensate me and provide benefits through that time. As
7 mentioned this would only be a payment & exit to mitigate the current hostile work
8 environment and unsafe work conditions and would not include any
9 litigation/arbitration waiver agreements nor any non-disclosure agreements beyond
10 what I've already signed as an employee. Any further contractual agreements beyond
11 what I've already signed would need to be reviewed by my team of lawyers and the
12 compensation for each would need to be negotiated by each new specific requirement.
13 This was also captured in the Issue Confirmation.

14 **G. ADMINISTRATIVE LEAVE (CONSTRUCTIVE TERMINATION, 2021 #3)**

15 345. The Ninth Circuit held over a decade ago that "placement on administrative leave
16 can constitute an adverse employment action."²²⁸ The proper inquiry is whether the action is
17 "reasonably likely to deter employees from engaging in protected activity."²²⁹ However, it may
18 also qualify as an adverse employment action if there are associated injuries due to the leave,
19 like not being able to take exams required for career advancement, loss of extra pay, and loss of
20 opportunities for work experience. Courts have also found paid administrative leave can be an
21 adverse employment action if the leave is 'stigmatizing.'²³⁰

22 346. Gjovik requested that Apple modify her reporting relationship with her
23 supervisors while they investigated and as a temporary resolution to the hostile work
24 environment. Gjovik asked, at the very least, that her prior workload be restored, and that
25 interactions with her supervisors be kept to writing. This was not an unreasonable request.
26 "Where the conduct being investigated involves a supervisor and the supervisor's direct or
27 indirect report, an employer should strongly consider modifying the relevant reporting
28 relationship pending completion of the investigation to avoid further harassment or intimidation
of the accused or disruption to the work environment."²³¹ Instead of accepting Gjovik's request,
Apple suddenly placed Gjovik "on leave," despite her protests, and refusing her attempts to

²²⁸ *Dahlia v. Rodriguez*, 735 F.3d 1060, 1078 (9th Cir. 2013).

²²⁹ *Id.*

²³⁰ *Retaliation*, Practical Law Practice Note 5-501-1430

²³¹ *Handling Employment-Related Internal Investigations*, Practical Law Practice Note 1-501-9452

1 negotiate the terms of the leave. The act of placing an employee on administrative leave can be
2 an adverse employment action.²³²

3 347. As in *Overall v. Tennessee Valley Authority*, the Respondent engaged in a cover-
4 up of safety hazards including by removing the employee from the site of the safety issues, then
5 from the entire facility where the safety issues occurred, then from contact with the system at
6 issue, and finally removing the employee from their employment entirely, and the employer's
7 justifications were refuted by the evidence.²³³ The removal of a worker making safety
8 complaints from the workplace where the safety issues are occurring has been found to be
9 evidence of retaliation, noting: the whistleblower was removed from the area where the whistle
10 would most likely be blown. The chilling effect on fellow workers' propensity to report problems
11 would be the unmistakable message sent by the company in moving the Complainant."²³⁴

12 348. Okpo and Alek's pretextual gaslighting of Gjovik while she was on leave was
13 similar to the Respondent in *Thomas v. Arizona Public Service Co*, where the Respondent
14 claimed adverse action was taken due to Complainant not being willing to work overtime (but
15 there was no overtime available during the period), the employee had lack of initiative (but
16 three prior performance reviews lauded Complainant's initiative), and said Complainant did
17 have enough experience (but a prior performance appraisal had mentioned her performance was
18 excellent).²³⁵ Here, Okpo complained Gjovik referred to the administrative leave as indefinite
19 (even though he refused to provide her a timeline), Okpo complained Gjovik talked about Apple
20 not wanting her to use the company Slack (but he phrased it as he never told Gjovik Apple
21 would remove Gjovik's access to Slack, which Gjovik never said), Okpo claimed Gjovik asked
22 to be on leave (even though Gjovik only asked for help mitigating the retaliation from her
23 managers and repeatedly said in writing she didn't want to be put on leave), Okpo claimed
24 Gjovik could return from leave at anytime (but when Gjovik asked to return, Okpo then said no,

25 ²³² *Whitehall v. Cnty. of San Bernardino*, 17 Cal. App. 5th 352, 367, 225 Cal. Rptr. 3d 321, 332 (2017);
26 See *Lakeside-Scott v. Multnomah*, 556 F.3d 797, 803 n. 7 (9th Cir.2009); See *Dahlia v. Rodriguez* (9th
27 Cir. 2013) 735 F.3d 1060, 1078, citing *Coszalter v. City of Salem* (9th Cir. 2003) 320 F.3d 968, 975.)
28 *Whitehall v. Cnty. of San Bernardino*, 17 Cal. App. 5th 352, 367, 225 Cal. Rptr. 3d 321, 332 (2017)

²³³ *Overall v. Tennessee Valley Authority*, ARB No. 98-111, ALJ No. 1997-ERA-53 (ARB Apr. 30,
2001) – ("Respondent engaged in a coverup of safety hazards to facilitate fuel load and start up at its
nuclear facility, an integral facet of which was to remove Complainant from the ice condenser system at
the facility, from employment at the facility, from contact with the ice condenser system, and ultimately
from Respondent's employment altogether, because of Complainant's activities to ensure the safety of the
ice condenser system.")

²³⁴ *Scerbo v. Consolidated Edison Co. of New York, Inc.*, 89-CAA-2 (Sec'y Nov. 13, 1992).

²³⁵ *Thomas v. Arizona Public Service Co.*, 89-ERA-19 (Sec'y Sept. 17, 1993).

1 but then said again she can ask to return at anytime, even though he just said no), and Alek's
2 complained Gjovik refused to participate in his investigation (even though Gjovik repeatedly
3 said she was happy to help and willing to participate).

4 349. In Gjovik's August 23 2021 "Issue Confirmation" she wrote she had planned "for
5 weeks" to go to the office on Aug 5 2021 "*to get my computer with more evidence.*" She said she
6 told Okpo this several times. Gjovik was then "removed from the workplace" by Okpo the day
7 prior. Gjovik was also working with colleagues on August 3-4 2021 to gather evidence of the
8 slab, and told Okpo this, and Okpo then removed her from the workplace the day Apple sent
9 teams on site to do repair work and testing. Gjovik complained Okpo refused to give her any
10 timeline for updates or when she could come back. She complained he also said she doesn't need
11 to check email or even respond to the Issue Confirmation, and Gjovik told Okpo it "feels like a
12 negative employment action." She complained Okpo "says its voluntary but I also don't have a
13 choice." (pg29).

14 350. Gjovik and Okpo were supposed to reviewing remaining evidence during their
15 meeting on August 4 2021. Gjovik had a Box folder prepared labeled 'To Review 8-4' as well as
16 the other folders they had not completed yet. However, Okpo told her they are not reviewing
17 anymore evidence now. Gjovik told him it was clear the investigation was a sham and she did
18 not want to stop participating in the investigation to ensure it happens. Okpo told her she's on
19 leave now. Gjovik grieved to him for over 30 minutes.

20 351. On August 24 2021, Okpo responded, "The investigation is ongoing and I've
21 started conducting witness interviews. I am not able to communicate a timeframe on next steps,
22 but as the investigation progresses, I will provide you with additional updates."²³⁶ Corporate
23 employers are advised to "Decide in advance on a target date for completion of the investigation.
24 Setting and meeting a target completion date ensures that the investigation concludes promptly,
25 allowing for swift corrective action as necessary and minimizing any costly paid administrative
26 leave time for affected employees. It also signals to the affected employees that the employer is
27 taking their concerns seriously."²³⁷

28 352. Further, it was clear to Gjovik Apple had initiated her termination as soon as it
"removed her from the workplace and all workplace interactions." As discussed in prior

²³⁶ Email from Okpo to Gjovik; Date: Aug 24 2021; subj: : *Re: APPLE CONFIDENTIAL: Issue Confirmation*

²³⁷ Handling Employment-Related Internal Investigations, Practical Law Practice Note 1-501-9452

1 sections, parties that Apple told her were supposedly under investigation were put in charge of
2 handling any concerns from Gjovik’s coworkers about how that exact person had been treating
3 Gjovik – Gjovik’s leadership told her organization they would discuss “the Ashley Issue” at an
4 All Hands meeting two months later – and other signs of animus and plans to terminate Gjovik.
5 Gjovik extended the fantastical world Apple was creating to the extent of querying one of
6 Apple’s fake social media accounts, used to harass Gjovik, as to what West was up to with the
7 “Apple Issue” conversations.

8 **H. DENYING BENEFITS**

9 353. Around August 20 2021 Gjovik asked to attend an Apple training she was
10 previously registered for, and noted she was granted permission by the professors (forwarding an
11 email with their permission), however noting the professors asked her to ask Okpo for
12 permission to attend so she didn’t ‘face disciplinary action.’ Okpo responded to Gjovik’s email
13 denying Gjovik’s request to attend the training and said nothing to reassure Gjovik she would
14 not be disciplined if she wanted to return to work. Gjovik complained about this in the Issue
Confirmation (pg29).

15 354. Gjovik then replied to Okpo and complained to him she felt the leave was
16 retaliatory and punitive. After Gjovik’s response, Okpo then replied saying Gjovik could request
17 to come back to work at any time (note, Okpo did not say Gjovik could come back to work at
18 any time – but that she could request to come back). Apple’s framing of this supposed ‘offer’
19 and combined with its simultaneous rejection of her request to come back for a training – made
20 it clear Apple had no intention to let Gjovik come back, and if Gjovik asked, Apple would use
21 her request as an excuse to force her to resign or otherwise create pretext for removing her from
22 the company.

23 **I. THREATS, INTIMIDATION, & GAG ORDERS**

24 355. Gjovik submitted a Business Conduct ticket on December 22 2020 asking for
25 approval to work on a law school project focused on environmental health protections. On
26 December 23 2020, Apple Business Conduct responded: *“Hi Ashley, Thank you for reaching out*
27 *to Business Conduct. Regarding your questionnaire for your law school project; since the*
28 *activity will not result in the development of intellectual property relevant to Apple’s business,*
and the topic of your work ‘Improving tenant protections and redress options on Santa Clara

County (or maybe California/state) hazardous waste remediation sites' is unrelated to Apple's business, there are no concerns that the project will result in a conflict of interest. You did note that your work building sits on a Superfund site that touches residential land, but I agree with your assessment that this will not likely pose any issues. Like any outside activities, please make sure not to use any Apple time, material, facilities or resources, and in the process of working on this you do come across any matters related to Apple, please reach back out for additional guidance." (HRC000003371)

356. On January 27 2021, Gjovik responded to the Business Conduct email and added: "Thank you! I just wanted to provide an update on this — the focus/objective is still the same, but instead of pursuing legislation we're pursuing press coverage and possible litigation. This is still about my story and residential remediation law — and I do not plan on identifying as an Apple employee or using Apple resources. Also, we added a new side-project. I'm partnering with the California Dept of Health as a volunteer and helping them create a "know your rights" page for residents who think they may be suffering from environmental exposure issues. Same deal — not identifying as Apple employee or using apple resources. I've kept my Director & Sr Director up to date." (HRC000003371)

357. On March 22 2021, Powers told Gjovik she's "not allowed talk to anyone other than [Powers], EH&S, and Jenna about my safety concerns about Stewart or even tell anyone it's a Superfund site. He said he didn't want his team to "know" because they'd be "upset." He also gave me feedback about an I&D training I was hosting, that "I was being too hard on the white man." He also told me this all as employee feedback and said it's only a "warning" because of my "mental health."²³⁸ Gjovik also included this in her August 23 2021 Issue Confirmation (page 16).²³⁹ As mentioned, Gjovik tried repeatedly to get Waibel to get Powers to stop saying this, but then Waibel said it too.

358. On April 8 2021, a private investigator showed up outside Gjovik's home in San Francisco and was following and recording her. Then, a few days later, her prior neighbors next to 3250 Scott Blvd complained of "a black sedan parked up the street and staring into people's windows with binoculars." Gjovik told them to take pictures of it and call the police. Gjovik

²³⁸ Ashley Gjovik email to Antonio Lagares; Date: July 8 2021 3:14pm; Subject: Re: Introduction; Hle
²³⁹ Hall v. U.S. Army, Dugway Proving Ground, 1997-SDW-5 (ALJ Aug. 8, 2002) – ("The record reflects that one of his military supervisors actually placed him under a "gag" order whereby he was told in writing that he could not go outside his agency with his complaints. In this regard, see TR at 5889-5890. In my many years of presiding over these cases, I have seen such restriction only once before.")

1 complained about it to coworkers and her professors. One of her professors told her to report it
2 to the Santa Clara District Attorney’s office, which she did.

3 359. On April 14 2021, one of Gjovik’s law school professors responded to her saying
4 “everyone who knows about your situation is correct about being concerned about retaliation.”
5 On April 15 2021, Gjovik emailed an Apple Senior Director and friend, Josh, and said her career
6 at Apple started to “unravel” “a few weeks ago” when “EHS emailed me & our mgmt team
7 casually saying they wanted to do vapor intrusion testing in our office building.” She said her
8 manager “forbid [her] from speaking to anyone about [her] concerns or the sites Superfund
9 status other than [Powers] and our Env, Health, & Safety team.” Gjovik added, “I told our senior
10 director he either needs to move me under him or another director, or I’m going to look for
11 another job at Apple or elsewhere.”²⁴⁰

12 360. On April 27 2021, Gjovik had the phone call with Waibel, where Waibel gives
13 her the five-point balancing test. Waibel said, “[Gjovik is] allowed to speak about any concerns
14 about the terms and conditions of [her] employment — but [she] can only share information that
15 is “complete and “accurate.” Further, [Waibel] said [she] should not cause “panic” if there’s
16 “no reason for panic.” In addition, [Waibel] said if there’s any risk to employee’s safety, that
17 communication would need to come directly from EHS.”

18 361. On May 17 2021, during a meeting with Gjovik, Steiger, and Waibel, Apple said:
19 Unless VI testing is done in the future, no additional data will be shared. If VI testing is done in
20 SD01 in the future, the results will be shared with me. There is no timeframe for testing for
21 vapor intrusion in Stewart 1. EHS might not test for vapor intrusion in Stewart 1 this year, or
22 near future — they are looking over the building evaluation report and then will make a decision
23 at an unspecified time whether they do VI testing or not. On May 17 2021, during a meeting
24 with Gjovik, Steiger, and Waibel, Apple said: “Any additional questions I have about the
25 specifics of soil/groundwater chemicals & vapor intrusion at the site, including my pending
26 questions from April, will not be answered by EHS.”

27 362. On July 8 2021, during a Meeting with Gjovik, Waibel, Steiger, and Jain, Apple
28 said: “Antone/Michael/Jenna will not answer any of my additional questions, or provide
additional questions, or provide any guidance around risk & exposure other than “they feel it is
safe.” On August 17 2021, Okpo emailed Gjovik: “As previously mentioned, EHS is
investigating your building and workplace safety concerns, and they will be in contact with you

²⁴⁰ Gjovik email to Josh, Date: April 15 2021; Subject: Apple Chemical Exposure, Ethical Concerns

1 when they have an update to share. Additionally, as I mentioned during our call on 8/4/21, you
2 are not expected to participate in any work-related assignments, and your focus at this time
3 should be on the investigation.”

4 363. Gjovik was further intimidated by the Workplace Violence interrogator, the
5 termination, the legal threats on September 15 2021, the co-worker harassment on social media
6 and in her emails/messages, the anonymous accounts threatening her online, the people lurking
7 around her home, and other intimidation.

8 364. Apple managers, employees, and agents have referred to Gjovik’s complaints to
9 the federal and state government about Apple Inc as “*unsubstantiated*,” “*meritless*,” “*baseless*,”
10 “*dead in the water*,” and that there’s “*no case*.” Apple’s agents referred to Gjovik as an
11 “*ambulance chaser*” and her cases as “*shakedown lawsuits*.” Apple manager Ricky and ex-
12 Apple employees have publicly called Gjovik a “*liar*,” “*predator*,” “*racist*,”
13 “*inconsequential*,” “*not a real whistleblower*.” These parties have described Gjovik’s protected
14 activities as a “*vendetta*,” “*warpath*,” “*perjury*,” “*fabricated nonsense*,” “*misleading rhetoric*,”
15 and “*misinformation*.” [all of these posts have been collected, archived, and documented]

16 365. Among other things, Apple Inc & their agents have publicly called Gjovik a “*liar*,”
17 “*toxic*,” “*attention-seeking*,” “*obnoxious*,” “*vindictive*,” “*entitled*,” “*cancer*,” “*lacking credibility*,” “*dishonest*,”
18 “*malicious*,” “*a sociopath*,” “*a provocateur*,” “*unhinged*,” “*insane*,” “*overweight*,” “*a narcissist*,” “*universally*
19 “*hated*,” “*a psychopath*,” “*paranoid*,” “*Bipolar*,” “*psychotic*,” “*schizophrenic*,” “*a grifter*,” “*a Karen*,” “*a Super*
20 “*Karen*,” “*Karenx100*,” “*a typical feminist*,” and a “*classic cow*.” [all of these posts have been
21 collected, archived, and documented]

22 366. Assumed agents of Apple Inc referred to Gjovik’s protected activities as “*worthy*
23 “*of death*” (Sept 7 2021) and made references to Gjovik dying from “*double tap*” gunshot wounds
24 (Dec 20 2021), that in Russia Apple whistleblowers would die from a “*car accident*” (Oct 15
25 2021). The day she was fired an Apple account posted on an article about Gjovik that he wanted
26 Apple to “*hunt [leakers] down like wild animals*” and they “*want to see them destroyed*”
27 (September 9 2021). One Twitter account, Bezie Wacks, posted on Sept 10, 2021, the day after
28 Gjovik was fired, that the world was “*reaming*” her and that Gjovik deserved it. The account
also paid to promote (advertise) the post. Another account posted a photo of a ban holding a
baseball bat and wrote that Tim Cook was “*gonna f@*k some peeps up*” (September 22 2021).
Another Apple account was repeatedly, directly harassing Gjovik on social media and at one

1 point referenced what was happening to Gjovik as “*the nail that sticks out, gets hammered*” (Jan
2 29, 2022). [all of these posts have been collected, archived, and documented]

3 367. Agents of Apple Inc wrote Gjovik was “*deserving of misery*,” that they looked
4 forward to seeing Apple “*swallow her & spit her out*,” and that she is lucky Apple has not
5 “*crushed her like a bug*.” They posted “*She’s a senior manager at Apple and going on a tirade*
6 *against them over the ground beneath the building. What did she expect to have happen to her?*”
7 and “*Apple fired you because they already know how this ends... They waited and looked for a*
8 *policy violation, found it, and booted you.*” Another wrote that as a “*seasoned employee, she*
9 *more than others, was well aware of the consequences of airing dirty laundry*,” and Apple
10 should “*have fired her weeks ago*.” [all of these posts have been collected, archived, and
documented]

11 368. Things escalated more, and in January 2022, Apple learned Gjovik was working
12 on a federal legal filing documenting Apple’s criminal threats and intimidation, and promptly
13 sent an ex-Apple Global Security employee after Gjovik, with the employee then without merit
14 (and later confirmed by the employee to be without merit) reporting Gjovik to the FBI and law
15 enforcement for “criminal blackmail and extortion,” among other felonies, Then, days after
16 viewing the legal filing Gjovik planned to submit addressed to the US District Attorney’s office
17 as well as several federal and state agencies, and part of new charges Gjovik filed that month for
18 the witness intimidation, the employee then filed a lawsuit against Gjovik again accusing Gjovik
19 of “criminal blackmail and extortion,” claiming Gjovik’s NLRB charge against Apple was filed
20 in bad faith, and claiming she feared for her safety from Gjovik, was not sure if Gjovik had a
21 gun, and moved homes because of Gjovik. The employee also reported Gjovik’s federal legal
22 filing to Gjovik’s webserver as “child pornography.” Similarly, upon learning of Gjovik’s
23 appellate win of the employee’s retaliatory lawsuit being cited in a SCOTUS brief, the employee
then again reported (or claimed to have reported) Gjovik to law enforcement and accused Gjovik
of more felonies.

24 369. In *Centeno-Bernuy v. Perry*, here an employee filed reasonable, good faith labor
25 complaints against an employer and as soon as the learned of the complaints, the employer
26 (themselves or via agent as here with Appleseed) responded by reporting the employee to law
27 enforcement and accusing the employee of extremely serious federal crimes.²⁴¹ In *Centeno-*
28 *Bernuy*, the employer repeatedly, without merit and in retaliation for the labor activity, reported

²⁴¹ *Centeno-Bernuy v. Perry*, 302 F. Supp. 2d 128 (W.D.N.Y. 2003).

1 the workers as “terrorists” to INS, claimed they were part of a “*sleeper cell*,” claimed they were
2 involved in trafficking and smuggling, and attempted to have them deported. During litigation of
3 the employee’s lawsuit against the employer, the employer also alleged the employees and
4 lawyers were involved in “*the biggest operation of trafficking in and smuggling of illegal aliens*
5 *in the 21st Century*.”²⁴² The employer was able to get INS to open an investigation into the
6 employees and repeatedly claimed to be working with the agency against the employees. A
7 federal court issues a restraining order against the employer from any further harassment and
8 reports to government or law enforcement about the employees.²⁴³

9 **J. INTERROGATION & SUSPENSION**

10 370. Apple claims it began investigating Gjovik promptly following a Business
11 Conduct complaint filed on August 28 2021? about one of Gjovik’s Twitter posts made on
12 August 29 2021?. The post in question was Gjovik complaining about Apple asking repeatedly
13 to scan her ear canals. There was nothing to investigate about this – Gjovik made the post from
14 her own account. If Apple felt what Gjovik said was some sort of policy violation, they would
15 have known that immediately. Apple then claims they began investigating Gjovik’s comments
16 about Face Gobbler at some unknown point, but no later than September 15 2021. Again, there
17 was nothing to investigate about this – Gjovik made these comments under her own name. If
18 Apple believed Gjovik’s statements were some facial policy violations worthy of immediate
19 termination, Apple would have known that immediately.

20 371. Meanwhile, Apple repeatedly contacted Gjovik on September 3 and 7 2021, with
21 Okpo asking to talk to Gjovik about Gjovik’s concerns, while secretly planning on interrogating
22 Gjovik. This is a known tactic of these big tech companies, with Facebook recently doing
23 something similar where it already planned to fire an employee for ‘leaking’ yet told the
24 employee the employee was going to be promoted, in order to coerce the employee to enter an

24 ²⁴² Centeno-Bernuy, supra – (“Despite Perry’s insistence to government authorities that plaintiffs are
25 terrorists, he admitted at the hearing that he has no evidence that the plaintiffs are terrorists or members
26 of a sleeper cell; it is simply his belief or opinion that they are.”)

26 ²⁴³ Centeno-Bernuy, supra – (“Ordered that defendant is restrained and enjoined from contacting or
27 communicating with, in any way, any local, state or federal government official or agency, including but
28 not limited to the United States Attorney General, the United States Attorney, the New York State
Attorney General, the United States Department of Labor, the New York State Police, the INS, the
United States Department of Homeland Security, and the United States State Department, with regard to
the and their attorneys; and it is further; Ordered that defendant ... is restrained and enjoined from
any further retaliation, in any form, against the plaintiffs...”)

1 interrogation room with security personnel.²⁴⁴ Following Apple’s own post-hoc, meandering
2 explanation for Gjovik’s termination, Apple would have seen public posts by Gjovik on/around
3 August 28 and August 30 2021 that Apple thought was facially worthy of immediate
4 termination, yet Apple would not suspend Gjovik’s accounts or terminate Gjovik until
5 September 9 2021.²⁴⁵

6 372. In determining whether company's interrogation of employee tends to be coercive
7 or threatening in light of total circumstances, court considers: the history of employer's attitude
8 toward its employees; the nature of information sought; rank of questioner in employer's
9 hierarchy; the place and manner of conversation; the truthfulness of employee's reply; whether
10 employer had valid purpose in obtaining information sought about protected activities; whether
11 valid purpose for interrogation, if existent, was communicated to employee; and whether
12 employer assured employee that there would be no reprisals.²⁴⁶

13 373. Here, Gjovik had no warnings, Gjovik was not assured of no reprisals, the
14 interrogator was part of the “Workplace Violence” Team, Apple had been acting adversarial to
15 Gjovik, and its entirely unclear what Apple wanted to question Gjovik about. The record seems
16 to show Apple simply wanted to fire Gjovik, and they wanted to do it over the phone or a video
17 call in order to obtain something they wanted from Gjovik.

18 374. Investigative fairness “contemplates listening to both sides and providing
19 employees a fair opportunity to present their position and to correct or contradict relevant
20 statements prejudicial to their case, without the procedural formalities of a trial.”²⁴⁷ Good cause,
21 in the context of implied employment contracts, means ‘fair and honest reasons, regulated by
22 good faith on the part of the employer, that are not trivial, arbitrary or capricious, unrelated to
23 business needs or goals, or pretextual.’”²⁴⁸

24 ²⁴⁴ The Guardian, ‘*They’ll squash you like a bug*’: how Silicon Valley keeps a lid on leakers, March 16
25 2018, [https://www.theguardian.com/technology/2018/mar/16/silicon-valley-internal-work-spying-](https://www.theguardian.com/technology/2018/mar/16/silicon-valley-internal-work-spying-surveillance-leakers)
26 [surveillance-leakers](https://www.theguardian.com/technology/2018/mar/16/silicon-valley-internal-work-spying-surveillance-leakers)

27 ²⁴⁵ Apple’s Position Statement, “*Apple FINAL DOL Response (Gjovik - CERCLA, OSHA, SOX), March 4*
28 *2022*”, Jessica R. Perry of Orrick, Herrington, & Sutcliffe (attorney’s for Apple Inc).

29 ²⁴⁶ *Tellepsen Pipeline Services Co. v. N.L.R.B.*, 320 F.3d 554, 171 L.R.R.M. (BNA) 3065, 147 Lab. Cas.
30 (CCH) ¶ 10177 (5th Cir. 2003); West’s Key Number Digest, Labor Relations 382.1; 3 Am. Jur. Proof of
31 Facts 2d 699 (Originally published in 1985).

32 ²⁴⁷ *Silva v. Lucky Stores, Inc.*, 65 Cal. App. 4th 256, 264, (5th Dist. 1998) (citing *Cotran v. Rollins Hudig*
33 *Hall Intern., Inc.*, 17 Cal. 4th 93, 108, 69 Cal. Rptr. 2d 900, 910; see *Serri v. Santa Clara University*, 226
34 Cal. App. 4th 830, 873, 172 Cal. Rptr. 3d 732, 769, 304 Ed. Law Rep. 1128 (6th Dist. 2014);

35 ²⁴⁸ *King v. United Parcel Service, Inc.*, 152 Cal. App. 4th 426, 438, 60 Cal. Rptr. 3d 359, 370 (3d Dist.
36 2007); *Ayala v. Costco Wholesale Corporation*, 2018 WL 6307891, *3 (C.D. Cal. 2018); *Lewis v. Dow*
37 *Chemical Corporation*, 2018 Fair Empl. Prac. Cas. (BNA) 177566, 2018 I.E.R. Cas. (N.D. Cal. 2018).

1 375. An unrealistically short period of time allowed a complainant to comply with a
2 management ultimatum is evidence of pretext.²⁴⁹ Here, Kagramanov gave Gjovik around 50
3 minutes to respond, and even then, after Gjovik responded saying she would participate, he then
4 suspended Gjovik's accounts after only 40 minutes had elapsed.

5 376. Investigative interviews may rise to an actionable level where they lead to an
6 adverse consequence or where the attending circumstances show that a reasonable person
7 subjected to them would be dissuaded from complaining about discrimination.²⁵⁰ In *Perez v*
8 *USPS*, a series of four investigative interviews over seven weeks were found to be an adverse
9 action when the interviews were never "preceded by an explication of its purpose," nor was the
10 employee warned "that the interviews could lead to disciplinary actions," and "each was carried
11 out in an offensive and antagonistic manner" including questioning the employee's "loyalty"
12 while "berating" him.²⁵¹ The Workplace Violence interrogator approached Gjovik first politely
13 like a friend but with an implied threat of general reprisals, and ended the exchange as quickly as
14 it started like they were enemies. The interrogator changed his story twice about what his intent
15 in approaching her was.

16 377. Coercive speech is not protected as free speech either by the First Amendment or
17 by labor laws. Interrogation is afforded protection by the Constitution and by labor laws only to
18 the point that it is free from coercion; and if the questioning is such that the employer may be
19 said to have engaged in conduct reasonably tending to interfere with the free exercise of
20 employee labor rights, then it has passed that limit and violates the law.²⁵² Threatening and
21 intimidating federal witnesses and whistleblowers is not a right for corporations protected by the
22 first amendment .

23 378. An employer's decision to arrange a "*cold-blooded tactic of interrogation*" of an
24 employee based on "*scanty evidence*" as an "*intentionally oppressive method of browbeating an*
25 *employee into a confession*" is plausibly a method "*beyond the outer bounds of socially tolerable*
26 *employer practices*" for an IIED claim.²⁵³ The tactic combines the intimidation of unlawful debt
27
28

249 See *Kansas Gas & Elec. Co. v. Brock*, 780 F.2d 1505, 1513 (10th Cir. 1985), *cert. denied*, 478 U.S.
1011 (1986). *Johnson v. Old Dominion Security*, 86-CAA-3, 4 and 5 (Sec'y May 29, 1991).

250 *Perez v. U.S. Postal Serv.*, 76 F. Supp. 3d 1168, 1185 (W.D. Wash. 2015). See *Ballard v. Donahoe*,
2014 WL 1286193, *12 (E.D.Cal.2014) – (recognizing that "an investigative interview can be deemed
adverse if it leads to an adverse consequence"); *Lee v. Hawaii*, 2010 WL 235009, at *7 (D.Haw.2010).

251 *Perez v. U.S. Postal Serv.*, 76 F. Supp. 3d 1168, 1185 (W.D. Wash. 2015)

252 43 Am. Jur. Proof of Facts 2d 699 (Originally published in 1985).

253 *Hall v. May Dep't Stores Co.*, 292 Or. 131, 133, 637 P.2d 126, 131 (1981).

1 collection tactics with the coercive dependency of the employee in the employment
2 relationship.²⁵⁴ Employers deliberating inflicting distress upon their employees in this way
3 waives their “*privilege of insisting on the employer’s legal rights in a permissible way*”, even if
4 that way may also cause emotional distress – as it is distinguished from simply trying to cause
5 distress for the sake of causing distress or other unlawful objectives.”²⁵⁵

6 379. In an attempt to strike a balance between the employer's interests in preparing its
7 case for trial, and the employee's interest in being free from unwarranted interrogation, agencies
8 and the courts have established specific safeguards designed to minimize the coercive impact of
9 such employer interrogation.²⁵⁶ The employer must communicate to the employee the purpose
10 of the questioning, assure him that no reprisal will take place, and obtain his participation on a
11 voluntary basis, and the questioning must occur in a context free from employer hostility to
12 protected rights and must not be itself coercive in nature. None of this happened with Gjovik;
13 Apple did the opposite.

14 380. If an employer wants to interrogate an employee who has engaged in protected
15 activity and who is about to provide testimony to the government – the employer is required to
16 communicate to the employee the purpose of the questioning, assure the employee that no
17 reprisal will take place, and obtain employee participation on a voluntary basis.²⁵⁷ If the
18 employer interrogates an employee, and the employee requests accommodation for the stress
19 (such as an anxiety medication), but the employer denies the request and agitates the employee,
20 the employer may be liable for IIED.²⁵⁸

21 381. Gjovik, as documented by her contemporaneous social media posts, was scared
22 Apple was not only about to threaten and punish her but could also attempt to physical harm her.
23 Further, Gjovik, as documented by her social media posts about the topic, expected Apple to
24 contact her to threaten her to withdraw/drop her government charges against them. Based on
25 information and belief, including stories of other big tech companies engaging in this type of
26

27 ²⁵⁴ Id.

28 ²⁵⁵ Id; Restatement (Second) Torts § 46, comment g.

²⁵⁶ 4 A.L.R. Fed. 280 (Originally published in 1970).

²⁵⁷ *NLRB v. Neuhoff Bros., Packers, Inc.* (1967, CA5) 375 F2d 372 -- (Violation of labor laws when employees were ordered to come to company offices for an unannounced purpose, and management representatives were present, including on at least one occasion a supervisor alleged to have made certain coercive threats, and in the general atmosphere of strong intense feelings.); *Re Johnnie's Poultry Co.* (1964) 146 NLRB 770; 4 A.L.R. Fed. 280; *Louton, Inc.* (1984) 270 NLRB No. 9, 116 BNA LRRM 1084, 1983-84 CCH NLRB ¶ 16266.

²⁵⁸ *Tandy Corp. v. Bone*, 283 Ark. 399, 678 S.W.2d 312, 52 A.L.R.4th 839 (1984)

1 conduct, Gjovik expected the meeting Apple wanted with her to involve unlawful conduct, and
2 that Apple would threaten her to help them with their cover-up of their prior felonious activity.
3 Gjovik requested the communications in writing because she wanted dissuade Apple from
4 violating the law and she wanted to be able to document her refusal to violate the law or
5 enable/aid Apple in violating the law. Gjovik’s refusal to join the illegal interrogation was
6 protected.²⁵⁹

7 **K. INVOLUNTARY TERMINATION**

8 382. The way Apple terminated Gjovik was highly irregular. On September 9 2021
9 Gjovik received an email with no subject line from an Apple employee she’d never heard of. As
10 in *Kolchinsky*, it was clear that Apple’s interrogator’s email to Gjovik on September 9 2021
11 requesting to talk “*within the hour*” was purely pretextual and simply additional furtherance of
12 the conspiracy to remove Gjovik from the company due to her protected activities and to hide
13 the company’s unlawful activities. The interrogator’s email came unexpectedly, without a
14 subject line, and without any reasoning or explanation as to why Gjovik was even being
15 contacted.

16 383. Apple fired Gjovik on September 9 2021 but would not even give her a hint as to
17 why she was fired until September 15 2021, and would not provide a formal explanation until
18 March 3 2022 (nearly six months later). Apple’s supposed justification for terminating Gjovik is
19 Gjovik’s public statements about concerns she had about work conditions at Apple that
20 supposedly occurred on August 28 and August 30 2021. Apple implies it began investigation
21 Gjovik around August 29 2021, but Apple never warned Gjovik she was under investigation
22 until the moment the Workplace Violence interrogator suspended Gjovik’s account access on
23 September 9 2021. Instead, Apple contacted Gjovik twice while she was on leave (September 3
24 and 7 2021), under the guise that Apple wanted to talk to Gjovik about Gjovik’s concerns about
25 Apple, not the other way around.

26 384. Further, when Apple presented its justification for terminating Gjovik in March
27 2022, Apple made false statements about what Gjovik shared (claiming it was entirely secret and
28 unknown), how Gjovik shared it (claiming she tried to hide her identity as the person who made
the disclosures), and the nature of what she shared (claiming it was something that would

²⁵⁹ 2003-SOX-32 *Jayaraj v. Pro-Pharmaceuticals, Inc.*, Recommended Decision & Order (ALJ Feb. 11, 2005) (Colleen A. Geraghty) Pg 24

1 become a customer product). In addition, Apple incited coworkers to file false reports against
2 Gjovik to help falsify a paper trail (with threatening an employee they will face discipline if they
3 do not file a complaint against Gjovik on September 15 2021, to facilitate the September 15
4 2021 email to Gjovik). Finally, when Apple contacted Gjovik on September 15 2021, Apple did
5 not expressly state this was the reason Gjovik was fired and in fact, Apple's lawyer replied the
6 next day, September 16 2021, claiming to have just found more examples of the supposed reason
7 Gjovik was fired. Apple's conduct was absurd.

8 385. As in *Jayco v. Ohio Environmental Protection Agency*, the Respondent waited a
9 suspicious amount of time to take action on the supposed justification for the employee's
10 termination, and the employer never gave the employee an opportunity for resolution.²⁶⁰ As in
11 *Adams v. Coastal Production Operators*, the Respondent justified termination of the
12 Complainant where the Complainant was not under an obligation to do the thing the Respondent
13 claimed they did not do, where the claim is illogical, and where the termination was
14 communicated without warning and prior to any opportunity for the employee to remedy the
15 issue.²⁶¹

16 386. In *Reeves*, there was ample evidence that a manager acted with retaliatory motive
17 when he opposed the employee's efforts to exercise labor rights and protected activity, made
18 accusations against the employee who did these things, suddenly made accusations against the
19 employee over a minor thing, did not properly investigate the employee's alleged misconduct,
20 and instead labeled the misconduct as "*workplace violence*," and referred the matter to a security
21 officer, knowing it could lead to the employee's discharge.²⁶² *It was clear "the goal [was]*
22 *getting rid of a worker who created trouble by complaining about matters that the supervisors*
23 *preferred to ignore."*²⁶³ An improper investigation like this can indicate that the investigator was
24 a cat's paw, a conduit for imputation of discriminatory animus.

25 **On Sep 9, 2021, at 2:08 PM, Aleks Kagramanov wrote:**

26 **Subject: [No Subject]** Hi Ashley, This is Aleks Kagramanov from Employee Relations. We're
27 looking into a sensitive Intellectual Property matter that we would like to speak with you about. We

28 ²⁶⁰ *Jayco v. Ohio Environmental Protection Agency*, 1999-CAA-5 (ALJ Oct. 2, 2000).

²⁶¹ *Adams v. Coastal Production Operators, Inc.*, 89- ERA-3 (Sec'y Aug. 5, 1992) – ("The respondent's stated reason for discharging the complainant (a crew boat skipper) -- abandonment of his crew, was not credible where the testimony did not indicate that the complainant was ordered to stay with the crew until a replacement arrived, where alternative transportation was available, the complainant initially learned he was fired prior to leaving the area.")

²⁶² *Reeves v. Safeway Stores, Inc.*, 121 Cal.App.4th 95, 115 (Cal. Ct. App. 2004).

²⁶³ *Reves v. Safeway Stores, Inc.*, 121 Cal.App.4th 95, 115 (Cal. Ct. App. 2004).

1 would like to connect with you at as soon as possible today; within this hour, and you should see an
2 iCal come through shortly. We sincerely appreciate you prioritizing this call and being flexible. If
3 you absolutely cannot make this time, please propose a few other times for us to connect today. I
4 wanted to send this introductory email so you know who I am when I set it up. I can share more
5 details when we meet. As part of Apple's policy, your cooperation and participation is imperative.
6 Thank you in advance and talk soon. Best, Aleks Kagramanov, Employee Relations, AMR Threat
7 Assessment & Workplace Violence (TAT) Apple

8 **On Sep 9, 2021, at 2:10 PM, Ashley Gjovik wrote:** Hi Aleks! Happy to help! Please send any
9 questions / updates via email so we keep everything written please. I will respond via email as
10 quickly as I can. Thanks!

11 **On Sep 9, 2021, at 2:27 PM, Ashley Gjovik wrote:** FYI, I forwarded your email & my reply to the
12 investigator on my NLRB case so he's aware you just reached out to me the day before my Affidavit
13 is supposed to be taken. This feels a little like witness intimidation, etc...

14 **On Sep 9, 2021, at 2:50 PM, Aleks Kagramanov wrote:** We are investigating allegations that you
15 improperly disclosed Apple confidential information. Since you have chosen not to participate in the
16 discussion, we will move forward with the information that we have, and given the seriousness of
17 these allegations, we are suspending your access to Apple systems. Best, Aleks Kagramanov,
18 Employee Relations, AMR Threat Assessment & Workplace Violence (TAT) Apple

19 **On Sep 9, 2021, at 3:07 PM, Ashley Gjovik wrote:** Hi Aleks, As mentioned, I'm definitely willing to
20 participate in your investigation. I only asked that the discussion be kept to email — I said nothing
21 about not participating in the discussion at all. I offered to help via email to ensure we have a
22 documented record of our conversations considering everything that's currently going on with my
23 investigation and my complaints to the government. I have been speaking out about work conditions,
24 about workplace safety, concerns about discrimination & retaliation, and about concerns about
25 intimidation and corruption (as reported to the government in public record). I'm very concerned
26 about what you are calling "serious allegations." Can you please provide me additional detail on
27 what these allegations are? And when you say move forward, are you simply suspecting my access
28 to Apple system? Or are you doing something more — and if so what? Your email is very
unexpected and I'm caught quite off guard if this is a real issue. I'd like the opportunity to remedy
any actual issues. Please let me know what the issues are so I can make a good faith attempt at that.
In the meantime, without any additional context or effort to communicate with me in email, this
really does feel like intimidation and additional retaliation and I will consider it as such.
Best,-Ashley

23 **Date:** September 9, 2021 at 6:54 PM **Subject:** Employment Status **To:** Ashley Gjovik **From:** Yannick
24 Bertolus (VP) Hi Ashley, Please see attached. ATTACHMENT: Re: Termination of employment
25 Apple has determined that you have engaged in conduct that warrants termination of employment,
26 including, but not limited to, violations of Apple policies. You disclosed confidential product-related
27 information in violation of Apple policies and your obligations under the Intellectual Property
28 Agreement (IPA). We also found that you failed to cooperate and to provide accurate and complete
information during the Apple investigatory process. Your access to Apple systems has been
suspended as of today and your employment will terminate on September 10, 2021. You will receive
your final pay which will include regular pay through your termination date, all accrued unused
vacation pay and any ESPP contributions made in the current period.

1 387. The Congress, the state legislature, and the courts have recognized that not every
2 demand of an employer is a lawful one, even if the employee originally agreed to comply with
3 such a demand. Noncompliance with an employer's order (or rule) is justified if the order (or
4 rule) is unreasonable or unlawful.²⁶⁴ If Gjovik was to have joined the meeting with Kagramanov,
5 who knows what would have happened to her. What we do know is the best explanation Apple
6 could muster was a week later and pointed to Gjovik's public statements about Apple including
7 Gjovik saying, "*Apple has an internal culture of surveillance, intimidation, & alienation. Employees*
8 *are closely monitored & our data hoarded in the name of secrecy & quality. We're told we have no*
9 *expectation of privacy, while Apple says publicly: privacy is a human right*". And another, "*We're*
10 *learning about Apple's long history of systemic oppression & retaliation against employees when*
11 *employees express concerns about discrimination, harassment, & other abuse. Why wouldn't Apple*
12 *try to use our data & their internal surveillance infrastructure against us?*" Apple would later claim
13 they fired Gjovik due to these posts and called it leaking internal information.

14 **L. LEGAL THREATS**

15 388. On September 15 2021 at 7:40pm PST, Apple's lawyers at O'Melveny & Myers
16 emailed Gjovik a letter implying she was terminated due to several Twitter posts and the video
17 content in a news article. The Partner, David Eberhard, pointed to the URLs and asked Gjovik
18 to remove the content, which was black and white photos of Gjovik secretly taken from her
19 iPhone to gather her biometrics without her consent; a video of these images including in her
20 living room, bedroom, bathroom, and in public spaces; and Twitter posts where Gjovik
21 complained about Apple's surveillance, intimidation tactics, overly restrictive confidentiality
22 policies, and ex-Intelligence/ex-military corporate paramilitary team, the "*Worldwide Loyalty*
23 *Team.*" This letter created the implication of surveillance and confirmed actual surveillance of
24 Gjovik by Apple. The message from Apple also expressly told Gjovik that Apple's surveillance
25 of its employees is 'confidential' and speaking of it publicly can result in immediate termination.

26 ²⁶⁴ Labor Code sections 222.5, 552, 922, 923, 1101, 1102, 1196, 1198, 1199, 1250, 1252, 1292 to 1294,
27 1350 to 1351, 1391 to 1393, 1420, and 2855; Labor-Management Relations Act of 1947, 29 U.S.C.A.
28 section 141; *Lockheed Aircraft Corporation v. Superior Court* (1946), 28 Cal. 2d 481, 171 P. 2d 21, 166
A.L.R. 701; *Fort v. Civil Service Commission* (1964), 61 Cal. 2d 331, 38 Cal. Rptr. 625, 392 P. 385;
Bowling v. Unemployment Insurance Commission (1966), Circuit Court of Lester Co., Civil Case No.
1725, reported in 4 Commerce Clearing House Unemployment Insurance Reporter, "Kentucky,"
paragraph 8285), Civil Code section 1676; Labor Code section 2855; *DeHaviland v. Warner Brothers*
Pictures (1945), 67 Cal. App. 2d 255, 153 P. 2d 983; *Liberio v. Vidal* (1966), 240 Cal. App. 2d 273, 49
Cal. Rptr. 520; *Heaps v. Toy* (1942), 54 Cal. App. 2d 178, 128 P. 2d 813).

1 389. In addition to the bizarre and clearly pretextual timeline of events with
2 Kagramanov, Apple’s lawyers’ communications also show Apple’s retaliatory animus by
3 timeline alone. Apple’s lawyers contacted Gjovik on September 15 2021, pointing to content
4 posted 16-18 days prior. This is supposedly the same content that Kagramanov reached out to
5 Gjovik about on September 9 2021, saying he had to talk to her “*within the hour*” about. It’s also
6 unclear why it took an additional six days after Gjovik’s termination for Apple to email Gjovik
7 the URLs of the Twitter posts it supposedly fired Gjovik over. If Apple’s post-hoc
8 rationalization was true, then with the posts already identified, it probably only took five minutes
9 to draft the email – something they could have sent on September 9 2021.

10 390. Further evidence of Apple’s pretext is that after the initial email, Eberhardt then
11 replied with essentially, “*oh hey here’s another one or two I just found.*” Its unclear how Apple
12 could be so certain it would fire Gjovik and have over two weeks to prepare its position and
13 communications with Gjovik, yet Apple forgot about two of the posts it fired her over, but then
14 remember them the next day. It’s also absurd for a law firm such as OMM to act like they don’t
15 know how to file a take-down request for actual Intellectual Property – but they know the
16 content is not Apple’s property and their requests would be denied.

17 1. Gjovik obtained a lawyer to respond to Apple’s lawyers about Apple’s
18 threatening letter. Gjovik’s lawyer, David Hecht, sent Apple a letter on October 6 2021, saying,
19 “*While I understand that Apple is not opposed to taking aggressive litigation postures (and*
20 *indeed has a history of doing so), I remind you of your ethical duties as an attorney regarding*
21 *the assertion of claims that have no basis in fact or law.*” Gjovik’s lawyer told Apple, “*Your*
22 *September 15, 2021, letter alleges that Ms. Gjovik violated the Confidentiality and Intellectual*
23 *Property Agreement with Apple dated January 31, 2015 (the “IPA”). You are incorrect.*” He
24 then went on to knock down Apple’s arguments one by one until nothing was left. Her lawyer
25 closed, “*Given Ms. Gjøvik’s removal of the content you referred to, coupled with the infirmities*
26 *of your intellectual property claims in the September 15, 2021, letter, we consider this issue*
27 *closed, and expect that Apple will immediately cease sending any further inappropriate*
28 *demands.*” Apple never responded.

 391. The lawyer Apple hired to harass Gjovik, David Eberhart, has since moved on to
suing a labor union on behalf of their employer with bogus trademark infringement claims in

1 order to harass the union members during bargaining.²⁶⁵ The case is *Trader Joe's Co v. Trader*
2 *Joe's United*, U.S. District Court for the Central District of California, No. 2:23-cv-05664. For
3 Trader Joe's is David Eberhart of O'Melveny & Myers. The union's attorney called Eberhart's
4 latest lawsuit "*outrageous and ridiculous*" and complained that the employer was "*spending*
5 *millions of dollars to try to weaponize the legal process*" and bust the union. "*This isn't going to*
6 *work, and we're going to stand strong for our right to unionize,*" he said.²⁶⁶

7 **Emails from Apple Lawyers**

8 September 15, 2021

9 From: David R. Eberhart, O'Melveny & Myers LLP

10 To: Ms. Ashley Gjovik

11 Dear Ms. Gjovik:

12 On behalf of Apple Inc., we write to request that you remove certain images and video that you have
13 displayed publicly in violation of your Confidentiality and Intellectual Property Agreement with
14 Apple dated January 31, 2015 (the "IPA").

15 The first are the images contained in the following tweet:

16 <https://twitter.com/ashleygjovik/status/1431824501457633283>⁸³³

17 As you know, the images are comprised of internal Apple emails regarding a confidential Apple-
18 internal user study project. Please remove those images from any public location and refrain from
19 further public disclosures about that project.

20 The second is the image contained in the following tweet:

21 <https://twitter.com/ashleygjovik/status/1432400136471072769>⁸³⁴

22 The related video is located here:

23 <https://volume->

24 [assets.voxmedia.com/production/7739cb4ec481082f874bd63244468b2d/547059/playlist.m3u8](https://volume-assets.voxmedia.com/production/7739cb4ec481082f874bd63244468b2d/547059/playlist.m3u8)

25 As you know that image and video were generated by a confidential internal Apple application
26 during confidential Apple-internal user studies. Please remove that image and video from any public
27 location and refrain from further public disclosures about that application or related user studies.

28 A copy of the IPA is included with this letter. I am available to discuss this matter at any time. If you
are represented by counsel in this matter, please identify your counsel.

29 **Gjovik Reply to Apple Lawyers**

30 Hello David, I hope you're well. Thank you for your email. I disagree that the posts fall under the
31 definition of confidential or proprietary information, but in an effort to resolve the matter amicably,
32 I've removed the two Twitter posts you cited, as requested. As for the video hosted by Vox, I do not
33 have the power to delete it as Vox is in control of their own servers, not me. I am talking others
34 about your request and someone will get back to you related to the Vox hosted video.

35 **Email from Apple Lawyers**

36 ²⁶⁵ Bloomberg, *Trader Joe's Union Files Labor Charge Over 'Frivolous' IP Suit*, October 4 2023,
37 [https://news.bloomberglaw.com/daily-labor-report/trader-joes-union-files-labor-charge-over-frivolous-ip-](https://news.bloomberglaw.com/daily-labor-report/trader-joes-union-files-labor-charge-over-frivolous-ip-suit)
38 [suit](https://news.bloomberglaw.com/daily-labor-report/trader-joes-union-files-labor-charge-over-frivolous-ip-suit)

²⁶⁶ Reuters, *Trader Joe's employee union asks to dismiss grocer's trademark lawsuit*, August 22 2023,
[https://www.reuters.com/legal/litigation/trader-joes-employee-union-asks-dismiss-grocers-trademark-](https://www.reuters.com/legal/litigation/trader-joes-employee-union-asks-dismiss-grocers-trademark-lawsuit-2023-08-22/)
[lawsuit-2023-08-22/](https://www.reuters.com/legal/litigation/trader-joes-employee-union-asks-dismiss-grocers-trademark-lawsuit-2023-08-22/)

1 September 16 8:49pm

David Eberhard with O'Melveny & Myers

2 "I look forward to further information about Apple's request to remove the video.

3 In the meantime, I note that there are additional tweets that also contain the same or similar images from confidential Apple-internal user studies:

4 <https://twitter.com/ashleygjovik/status/1432381395955900416> 835

5 <https://twitter.com/ashleygjovik/status/1432381497370034184> 836

6 Please remove those images from any public location, remove any similar images, and refrain from further public disclosures of the same or similar information.

7 **Gjovik Reply to Apple Lawyers**

8 Hi David, Again, I disagree that the posts fall under the definition of confidential or proprietary information, but in an effort to resolve the matter amicably, I've removed the two Twitter posts you cited, as requested.

9
10 **October 6 2021: Cease & Desist sent to Apple**

11 From: David L. Hecht, Partner

To: David R. Eberhart, O'Melveny & Myers LLP

Ashley M. Gjovik

12 Date: October 6, 2021

13 Re: Ashley Gjovik

Dear Mr. Eberhart,

14 I represent Ms. Gjovik. I am in receipt of your letter dated September 15, 2021 and subsequent email communication with my client. Going forward, please direct all such correspondence to me.

15 As you are aware, Ms. Gjovik has already complied with your September 15, 2021 demand to remove certain images from some of her Twitter posts. However, I write regarding the inappropriateness of your requests, which may comprise copyright misuse. While I understand that Apple is not opposed to taking aggressive litigation postures (and indeed has a history of doing so), I remind you of your ethical duties as an attorney regarding the assertion of claims that have no basis in fact or law.

16 Your September 15, 2021 letter alleges that Ms. Gjovik violated the Confidentiality and Intellectual Property Agreement with Apple dated January 31, 2015 (the "IPA"). You are incorrect. The IPA does not cover the images/video that Ms. Gjovik posted. For example, you take issue with Ms. Gjovik's post of screenshots of an automated email sent to Ms. Gjovik from "Ask," "an internal survey solution." The email itself was not marked as confidential. Further, there is no suggestion in the email that the in-person study referenced in the email was restricted to Apple employees or that its existence was confidential. The content of the automated email also contained nothing that could be considered secret or otherwise proprietary: there was no disclosure of the content, methodology, identity of any participants in the survey (other than Ms. Gjovik), or any of the survey's findings. The posted image of the email merely noted what was already known to the public: Apple was conducting 3D scans of human ears to "collect representative ear geometry data across age, gender, and ethnic groups" and to benefit "audio research efforts and better our understanding of ear geometry variance." It is no secret that Apple has been scanning a wide range of human ears to perfect its various AirPods products. In fact, Apple's Vice President of Product Marketing, Greg Joswiak, spoke publicly about the 3D ear scans over a year ago:

27 *"We had done work with Stanford to 3D-scan hundreds of different ears and ear styles and shapes in order to make a design that would work as a one-size solution across a broad set of the population,"*
28 *Joswiak says. "With AirPods Pro, we took that research further – studied more ears, more ear types.*

1 *And that enabled us to develop a design that, along with the three different tip sizes, works across an*
2 *overwhelming percentage of the worldwide population.”*

3 See Jeremy White, The secrets behind the runaway success of Apple’s AirPods, Wired (September
4 5, 2020), available at <https://www.wired.co.uk/article/apple-airpods-success>.

5 Accordingly, Ms. Gjovik cannot face restriction in disclosing a non-confidential email about the
6 mere existence of a survey concerning 3D ear scanning (scanning that Apple had already publicly
7 disclosed

8 much earlier) sent to her during the period in which Apple put her on administrative leave. Apple’s
9 demand for Ms. Gjovik to remove such content appears, therefore, to be pretextual.

10 Your September 15, 2021 letter and subsequent email communication also takes issue with
11 image/video that you contend “were generated by a confidential internal Apple application during
12 confidential Apple-internal user studies.” Apple holds no copyright to these images, which were not
13 authored by a human. As you are aware, United States copyright law only protects “the fruits of
14 intellectual labor” that “are founded in the creative powers of the mind.” Trade-Mark Cases, 100
15 U.S. 82, 94 (1879). Because copyright law is limited to “original intellectual conceptions of the
16 author,” Apple would be unable to register any of the images or video generated by the “Glimmer”
17 app since a human being did not create the work. Burrow-Giles Lithographic Co. v. Sarony, 111 U.S.
18 53, 58 (1884). Apple therefore cannot allege infringement of any copyright by Ms. Gjovik.

19 To the extent Apple argues that the images taken by the Glimmer app are confidential, they are not
20 marked as such. You also have not alleged how mere images of Ms. Gjovik, in her home, taken by
21 the Glimmer app, on Ms. Gjovik’s own phone, could qualify as confidential and/or proprietary
22 information under the IPA. For example, your letter fails to acknowledge that the images posted
23 were (a) taken by an automated process running on Ms. Gjovik’s own iPhone and (b) captured her
24 own likeness and portions of her living space. There can be no doubt that Ms. Ms. Gjovik is
25 permitted to post to the public her legitimate concerns about images of her, in her home, captured by
26 an automated process, on her own phone. Additionally, your letter fails to acknowledge that beyond
27 the non-proprietary images Ms. Gjovik posted, she intentionally rendered unreadable any
28 conceivably non-public information when posting these otherwise non- proprietary images. Your
claims of any violation of the IPA based on the posting of these images appear, therefore, to have no
basis in fact or law.

Given Ms. Gjovik’s removal of the content you referred to, coupled with the infirmities of your
intellectual property claims in the September 15, 2021 letter, we consider this issue closed, and
expect that Apple will immediately cease sending any further inappropriate demands.
Sincerely, David L. Hecht, Hecht Partners LLP

In December 2023, Eberhart confirmed he was no longer assigned to Gjovik’s matter, and Gjovik
had not heard from him since September 2021.

M. DENYLING

392. See threats, intimidation, gag orders, termination, and legal threats.

IX. DISTRESS & PHYSICAL HARM

393. Apple’s conduct of course left Gjovik with “*discomfort, worry, anxiety, upset stomach, concern, and agitation*”.²⁶⁷ However, as a direct and proximate result of Apple’s conduct, Gjovik also experienced overwhelming anguish, illness, “*shock, horror, nausea, fright, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment [and] worry*.”²⁶⁸ Apple’s conduct resulted in Post-Traumatic Stress Disorder and anxiety symptoms. Gjovik grappled with depersonalization and derealization.

394. Apple’s actions were so extreme and caused such severe disruption to Gjovik’s life, Gjovik suffered panic attacks worrying about losing her home and not having food or being able to care for her dog.²⁶⁹ Gjovik cried every day. Gjovik kept a “go bag” by her front door in case some Apple-captured police officer showed up to haul her away to prison in Seattle. Gjovik had to arrange guardians for her dog and drafted a signed letter she posted on the door and gave to the guardians that instructed the police to allow the guardians to pick up Gjovik’s eight-pound Chihuahua from the pound if Gjovik was arrested and incarcerated. Gjovik was and is constantly on edge.

395. As documented in legal filings, emails, doctor appointments, and in therapy sessions throughout these two years – Gjovik has suffered severe insomnia, nausea from stress to the point of vomiting, severe depression requiring anti-depressants due to suicidal ideation and crying uncontrollable for hours every day. Gjovik suffers from paralyzing anxiety, and it has been difficult to even get up and walk around, with Gjovik generally spending all day in some form of the ‘fetal position.’ Gjovik has alternated between overeating and under eating, but overall gained over forty pounds starting in late 2021. Gjovik’s body has been stuck in PTSD “hyperarousal” and she is constantly hyper-alert and vigilant, listening for sounds that there could be another break in, or another stalker outside her home waiting to harass her. Gjovik has not been able to ‘relax’ for over three years. Gjovik seriously considered suicide several times in 2021 – 2023.

396. Apple had full knowledge of Gjovik’s precarious situation, and the prior impact to her mental health before Apple started retaliating about Gjovik’s office. Apple knew the

²⁶⁷ *Koerber v. Encyclopaedia Britannica, Inc.*, No. B312047, 10-11 (Cal. Ct. App. Jul. 13, 2022)

²⁶⁸ *Crisci v. Security Ins. Co.*, 66 Cal.2d 425, 433 [58 Cal.Rptr. 13, 426 P.2d 173]; Rest.2d Torts, § 46, com. j. *Fletcher v. Western National Life Ins. Co.*, 10 Cal.App.3d 376, 397 (Cal. Ct. App. 1970).

²⁶⁹ *Alcorn v. Anbro Engineering, Inc.*, 2 Cal.3d 493, 498; *Fletcher v. Western National Life Ins. Co.*, 10 Cal.App.3d 376, 398 (Cal. Ct. App. 1970).

1 retaliation about the office would further traumatize Gjovik after Apple had previously
2 traumatized her due to the 3250 Scott Blvd emissions. Then, Apple intentionally terrorized
3 Gjovik more in addition to the office retaliation – with holistic, expansive, passionate terrorism
4 of Gjovik assumably in hope that Gjovik killed herself or died of cancer quicker than she would
5 have otherwise. Gjovik has spoken and written about this extensively over the last six months
6 after discovering what Apple did at 3250 Scott Blvd and realizing the incredibly depravity of
Apple’s conduct.

7 397. Gjovik noted in her June 2023 complaint to the US EPA about Apple’s activities
8 at 3250 Scott Blvd: “As mentioned, I also lived in the apartment complex next to the plant in
9 2020. I continue to suffer from the chemical exposure at the apartments and my office. While the
10 most severe issues seem to have been resolved, I now have asthma severe enough to require an
11 inhaler. Much of my hair fell out, and I am still trying to regrow the bald patches. I have what
12 appears to be permanent scar tissue on my skin from the chemical burns. I worry daily about my
13 increased risk for cancer and disease due to the exposure. I also suffer severe PTSD from the
14 experience. I will never be the same after what happened to me living next to 3250 Scott Blvd
for eight months.”²⁷⁰

15 398. As in *Varnadore v. Oak Ridge National Laboratory*, Apple retaliated against
16 Gjovik and caused Gjovik severe distress while Apple knew it nearly killed Gjovik in 2020 with
17 its illegal factory air emissions, and that Gjovik was exposed to carcinogenic air pollution in
18 2020 and also at her office from 2017-2021.²⁷¹

19 399. Further, note, in 2023, EPA proposed to ban the manufacture (including import),
20 processing, and distribution in commerce of TCE for all uses, with longer compliance
21 timeframes and workplace controls for some processing and industrial and commercial uses until
22 the prohibitions come into effect. The rule would protect consumers, workers, occupational non-
23
24

25 ²⁷⁰ “Where it was shown in an RCRA criminal endangerment case that the defendant's employees had
26 been exposed to toxic wastes while at work, the Tenth Circuit Court of Appeals, in affirming the
27 defendant's conviction, held that evidence that the employees were suffering from psychoorganic
syndrome as a result of the exposure, which could have impaired their mental faculties, was sufficient to
meet the ‘imminent danger of serious bodily injury’ standard.” U.S. v. Protex Industries, Inc., 874 F.2d
740 (10th Cir. 1989).

28 ²⁷¹ *Varnadore v. Oak Ridge National Laboratory*, 92- CAA-2, 5 and 93-CAA-1 (ALJ June 7, 1993) –
 (“Respondent intentionally put [the Complainant] under stress with full knowledge that he was a cancer
patient recovering after extensive surgery and lengthy chemotherapy”).

1 users and bystanders from the harmful health effects of TCE.²⁷² Gjovik was exposed to TCE
2 through the HVAC system at 825 Stewart Drive for over four years.

3 X. NEXUS

4
5 400. In order to prevail under the environmental statutes, the Complainant must only
6 prove (by a preponderance of the evidence) only that retaliatory motive *played a part* in the
7 employer's decision to take adverse action against the employee. The complainant does not need
8 to prove that "but for" the retaliatory motive he or she would not have suffered the adverse
9 action.²⁷³ The evidence already on hand is clear and convincing that Apple retaliated against
Gjovik due to her protected activities.

10 401. For example, as in *Du Jardin v Morrison Knudsen*, Complainant's reports to the
11 EPA about suspected CERCLA violations and quality issues, directly led to an EPA
12 investigation of Complainant's concerns, the EPA filed an extensive report embodying the
13 results of its investigation, the EPA report noted the Employer's conduct "demonstrated poor
14 judgement" (in Gjovik's case, EPA wrote that Apple's tampering with the sub-slab ventilation
15 exhaust was "not appropriate"), and then Complainant was "relieved of duty" because of the
event.²⁷⁴

16 A. CREDIBILITY

17
18 402. Ashley Gjovik became an employee of Apple in February 2015. Gjovik joined a
19 team with many long-tenured Apple employees who had been in positions of leadership and
20 influence at Apple for decades, and who had regularly interacted with top executives. Gjovik
21 worked for Apple Inc from February 23 2015, until Apple terminated Gjovik's employment on
22 September 9 2021 (effective September 10 2021).

23
24 ²⁷² US EPA: *TSCA: TCE*, October 2023, <https://www.epa.gov/assessing-and-managing-chemicals-under-tsc/risk-management-trichloroethylene-tce>

25 ²⁷³ *Ewald v. Commonwealth of Virginia*, 89-SDW-1, page 6-7, (Sec'y Apr. 20, 1995).

26 ²⁷⁴ *Du Jardin v. Morrison Knudsen Corp.*, 93-TSC-3 (ALJ Nov. 29, 1993) ("Based upon the fact that
27 E.P.A. investigated the incident and filed an extensive report embodying the results of its investigation,
the fact that E.P.A. found that the decision to turn on the induction fan under the specified circumstances
28 "demonstrated poor judgment," ...and the fact that Mr. Fuller was relieved of duty because of this event,
I infer that it was reasonable for Mr. DuJardin to believe that a possible violation of Federal
environmental protection statutes had occurred. Accordingly, I find that Mr. DuJardin's claim falls within
the subject matter jurisdiction of CERCLA.")

1 403. During her tenure with Apple, Gjovik led numerous high-profile projects. She
2 participated in engineering project management of numerous high-profile products such as the
3 iPhone, iPad, iPod, Apple Watch, MacBook Pro, MacBook Air, and Mac Pro and high-profile
4 projects such as the launch of the Apple Music subscription service, Apple’s transition of
5 computers from Intel to Apple silicon, and strategic initiatives striving to establish Apple’s first
6 company-wide Artificial Intelligence ethics policy.

7 404. During Gjovik’s nearly seven years with Apple, she was a significant contributor
8 in developing and improving critical process and policies, mentoring employees, and managers,
9 and providing strategic advice to executives. She has been praised for everything from “*saving*
10 *Apple money*” to “*driving better testing and higher quality in Apple’s software.*” Her direct
11 supervisor at the time of her termination previously illustrated what he called Gjovik’s
12 “*amazing work*” as: “*the combination of broad networking, collaboration, understanding of*
13 *many technical and non-technical areas;*” “*providing deep and meaningful insights;*” and
14 “*connecting people for more collaboration.*” He went on to say Gjovik had “*become a mentor to*
15 *people around the organization*” around “*relationship skills,*” “*crafting presentations,*”
16 “*increasing visibility and network,*” and “*coaching on tough conversations.*”

17 405. Gjovik’s importance to Apple Inc was exemplified in her many outstanding
18 performance reviews. These included Apple’s award to Gjovik of large bonuses and raises due
19 to her strong performance. Gjovik’s performance never necessitated any performance
20 improvement plan, nor did Apple ever issue any negative written reviews.

21 406. In fact, Apple told Gjovik that she was an extremely valuable member of the
22 company. At different times she was told by her supervisors that she was both “*key talent*”
23 (unreplaceable) and a “*high performer.*” Apple tracks these employee categories in its personnel
24 systems. Further, during every annual performance review at Apple, Gjovik received at least one
25 “*Exceeds Expectations.*”

26 **B. TEMPORAL PROXIMITY**

27 407. Temporal proximity itself may establish causation in whistleblower cases if the
28 interval between the retaliatory termination and an employer’s gaining knowledge of protected
activity is sufficiently short.²⁷⁵ Apple terminated Gjovik’s employment less than two months

²⁷⁵ *Thompson v. Houston Lighting & Power Co.*, No. 98-101, slip op. at 6 (ARB Mar. 30, 2001); see also
Gonzalez v. Nat’l R.R. Passenger Corp., No. 09-35422, 2010 WL 1539755, slip op. at *2 (9th Cir. Apr.
19, 2010); *Villarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1065 (9th Cir. 2002); *Couty v. Dole*, 886

1 after Gjovik filed internal and external complaints, participated an internal investigation,
2 participated in an external investigation with a government agency, filed a lawsuit
3 (charge/claim), and otherwise opposed Apple’s conduct. At the time of termination, Apple
4 refused to provide a coherent explanation as to why Gjovik was being terminated other than she
5 refused to get on a phone call with a “Workplace Violence” interrogator and instead asked for
6 the exchange to be in writing as she felt his contact was “witness intimidation” the day before a
7 federal affidavit.

8 408. Apple filed its first and only US EPA TRI/NEI records for 3250 Scott Blvd in
9 June 2021, reporting metric tons of solvent vapors were released into Gjovik’s ambient air in
10 2020. This is also when Apple suddenly closed Gjovik’s worker’s compensation, closed the
11 investigation and found no policy violations, and suddenly declared they were no longer going to
12 test the air of 825 Stewart Drive for vapor intrusion. Later, Apple removed Gjovik from ‘the
13 workplace’ and ‘all workplace interactions’ on August 4 2021, two days after Apple confirmed
14 the US EPA inspection of Gjovik’s office at 825 Stewart Drive on August 19 2021, requested by
15 US EPA due to Gjovik’s concerns. Also on August 2 2021, Apple suddenly scheduled weeks of
16 EH&S maintenance to be conducted prior to the August 19 2021 inspection and beginning on
17 the day Gjovik was ‘removed from the workplace’ and ‘all workplace interactions.’ Gjovik was
18 terminated on September 9 2021, only hours after the city of Sunnyvale inspected Gjovik’s
19 office for hazardous waste and material compliance, and wrote Apple up for yet another
20 violation.

21 409. Apple terminated Gjovik within weeks, days, and under some statutes – only a
22 matter of hours – after Gjovik engaged in protected activity. The temporal proximity here is
23 enough for sole substantiation, but there is much additional evidence of pretext. Apple did not
24 follow its own termination policies and process, and others were not terminated for the same
25 actions; others were not terminated for far worse actions.²⁷⁶

26 F.2d 147, 148 (8th Cir. 1989) (holding thirty-day interval sufficient to demonstrate causation); *Miller v.*
27 *Fairchild Indus.*, 885 F.2d 498, 505 (9th Cir.1989) (finding causation when adverse termination occurred
28 forty-two and fifty-nine days after separate protected activities).

²⁷⁶ *Yartsoff v. Thomas*, 809 F.2d 1371, 1376 (9th Cir. 1987) (holding that causation could be inferred
where the first adverse employment action occurred less than three months after the plaintiff’s protected
activity); *Erhart v. BofI Holding, Inc.*, 269 F. Supp. 3d 1059, 1076 (S.D. Cal. 2017) (citing *Yartsoff’s*
temporal standard in a SOX retaliation case)

1 C. ANTAGONISM & ANIMUS

2 410. An Employer's antagonism towards the Employees protected activity can be
3 displayed in many ways including ridicule and openly hostile actions and threatening statements,
4 or subtly such as asking a whistleblower who reported an issue to the government way they did
5 not report the issues through internal channels instead, or indirectly such as the Employers
6 deliberate violations of environmental regulations.²⁷⁷ A supervisor's disapproval of an
7 employee's complaining to a government agency indicates discriminatory intent.²⁷⁸ Comments
8 made by a manager or those closely involved in employment decisions may constitute direct
9 evidence of discrimination.²⁷⁹ *"Poorly veiled threats and an attempt to abruptly terminate"* an
10 employee quickly following protected activity was enough to *"raise an inference that the
protected activity was a contributing factor in the unfavorable action."*²⁸⁰

11 411. The Board explained, "There will seldom be "eyewitness" testimony concerning
12 an Employer's mental process."²⁸¹ However, here, among other displays of animus, one of
13 Gjovik's coworker, Ian, on her immediate team under Powers made a large quantity of social
14 media posts about and to Gjovik starting around August 23 2021. Only hours after Gjovik was
15 fired, the coworker posted about Gjovik's social media posts while she was on leave and said her
16 termination was a *"self fulfilling prophecy"* due to Gjovik *"attacking her employer"*, and *"Now
Apple has fired her for supposedly 'leaking' insider information."* *A brief glance at her twitter
17 feed can resolve the supposedly part," "I'd guess all of her claims are entirely baseless," "she's
claiming she was hallucinating and getting sick from the tVOCs – meanwhile no one else around
18 her was suffering the same," and "Right to Sue notices are the default position of the NLRB –
19 ergo, they decided *not* to take action of their own."* This coworker reported to a manager who
20 reported to Gjovik's manager David Powers, and the coworker's desk was only a couple desks a
21 way from Gjovik's (<20 feet) and also in the same office area as Powers and several of the
22
23
24

25 ²⁷⁷ *Timmons v. Mattingly Testing Services*, 95- ERA-40 (ARB June 21, 1996).

26 ²⁷⁸ See *Blake v. Hatfield Elec. Co.*, 1987-ERA-4, slip op. at 5 (Sec'y Jan. 22, 1992); *Fabricius v. Town of
Braintree/Park Dept.*, 1997-CAA-14 @ 5-6 (ARB Feb. 9, 1999).

27 ²⁷⁹ *Lederhaus v. Donald Paschen & Midwest Inspection Service, Ltd.*, 91-ERA-13 (Sec'y Oct. 26, 1992),
slip op. at 5, citing *Randle v. LaSalle Telecommunications, Inc.*, 876 F.2d 563, 569 (7th Cir. 1989);
Beshears v. Asbill, 930 F.2d 1348, 1354 (8th Cir. 1991).

28 ²⁸⁰ *Erhart v. BofI Holding, Inc.*, 269 F. Supp. 3d 1059, 1076 (S.D. Cal. 2017); *Tides v Boeing Co*, 644
F.3d at 814 (9th Circuit 2011); see also 29 C.F.R. § 1980.104(e)(2)(iv).

²⁸¹ *Timmons v. Mattingly Testing Services*, 95- ERA-40 (ARB June 21, 1996).

1 manager's office (<100 feet). This coworker surely overheard and engaged in conversations
2 about Gjovik, with Gjovik's management, prior to Gjovik's termination.

3 412. While discussed in depth in the civil lawsuit in privacy-related claims, Apple's
4 supposed legitimate reason for terminating Gjovik is unlawful in itself. Apple previously
5 attempted to 'code name' Gjovik's disclosures and claim what Gjovik said was secret, because
6 what Gjovik said is facially protected activity and not confidential. For example, Gjovik's
7 Twitter post about Apple's 3D ear scanning requests, contained the following: "I'm still over
8 here in Apple's time-out chair & they keep telling me to respect my abuser's privacy & be silent.
9 Meanwhile I got 3x of these in the last month since being on leave. NO, APPLE, STOP IT. I
10 can't tell if they're harassing me or just being super intrusive or both." Among other things, this
11 was protected 'opposition' activity and complaints about work conditions.

12 **D. POST HOC EXPLANATION**

13 413. The credibility of an employer's after-the-fact reasons for firing an employee is
14 diminished if these reasons were not given at the time of the initial discharge decision.²⁸² The
15 day Apple fired her, Apple did not even tell her she was under investigation or in trouble until
16 after Apple suspended all of her account access, and even then only vaguely accused her of
17 disclosing confidential information and said she refused to cooperate. In the termination letter,
18 Bertolus claimed Gjovik disclosed "*confidential product-related information*" and "*failed to*
19 *cooperate and to provide accurate and complete information during the Apple investigatory*
20 *process.*" There was no further explanation.

21 414. When Apple terminated Gjovik, Apple did not tell Gjovik why she was being
22 terminated. Okpo had contacted Gjovik on September 3 and 7 2021, claiming he wanted to talk
23 about Gjovik's complaints and mentioned nothing about Gjovik being under investigation or in
24 trouble. When Kagramanov first reached out to Gjovik on September 9 2021 2:08pm, he simply
25 said "*We're looking into a sensitive Intellectual Property matter that we would like to speak with*
26 *you about.*" He did not say anything about Gjovik being under investigation or in trouble. When
27 Kagramanov replied against at 2:50pm, now he said, "*We are investigating allegations that you*
28 *improperly disclosed Apple confidential information. Since you have chosen not to participate in the*
discussion, we will move forward with the information that we have, and given the seriousness of

²⁸² Negron v. Vieques Air Link, Inc., ARB No. 04-021, ALJ No. 2003-AIR-010, slip op. at 8 (ARB Dec. 30, 2004), aff'd Vieques Air Link, Inc. v. U.S. Dept. of Labor, 437 F.3d 102, 109 (1st Cir. 2006); Clemmons v. Ameristar Airways, Inc, ALJ CASE NO. 2004-AIR-011 (2012) .

1 *these allegations, we are suspending your access to Apple systems.”* Then when Bertolus contacted
2 Gjovik at 6:54pm, terminating her, he wrote: *“Apple has determined that you have engaged in*
3 *conduct that warrants termination of employment, including, but not limited to, violations of Apple*
4 *policies. You disclosed confidential product-related information in violation of Apple policies and*
5 *your obligations under the Intellectual Property Agreement (IPA). We also found that you failed to*
6 *cooperate and to provide accurate and complete information during the Apple investigatory*
process.”

7 415. On September 15 2021, Apple had a law firm contact Gjovik asking Gjovik to
8 delete some of her Twitter posts and to get a publisher to remove a video from a published
9 article. Apple still did not explain why Gjovik was fired but did claim that the URLs it sent her
10 to her own posts were violations of Apple policies. However, they did not elaborate further.
11 Gjovik removed the content but told the lawyers she did not think the content was confidential.

12 416. Then in March 2022, Apple hired a different law firm who submitted a position
13 statement to US DOL OSHA where they now explain why Gjovik was fired but refuse to
14 explain the content of what Gjovik shared and instead give it code names, and also falsely claim
15 the information was not already known and lied that the iOS application in question was
16 intended to be released to customers. Apple also claimed Gjovik tried to hide her involvement in
17 her own Twitter posts that included photos/videos of Gjovik’s face, taken by an app on Gjovik’s
18 iPhone. In this document, now Apple claims an Apple employee filed a complaint about Gjovik
19 on September 15 2021, which provided Apple a “subsequent confirmation that [Gjovik]
20 admitted to disclosing confidential information publicly and intentionally further justifies
21 Apple’s termination decision.” Again, the posts in question were all done under Gjovik’s name
22 and with Gjovik’s face, and no actions taken to hide or conceal Gjovik’s involvement. Further,
23 that employee would later admit they were threatened to file that complaint the day of (which
24 was the day Apple’s lawyers wanted to email Gjovik), and that employee then also sued Gjovik
25 and reported Gjovik to the FBI “because of” Gjovik’s federal charges against Apple. In 2023,
26 Apple has dropped any reference to that complaint or that employee, despite the employee
27 proclaiming repeatedly in 2022 that she was a ‘defense witness’ for Apple against Gjovik.

28 417. Further, in the March 4 2022 position statement, Apple claims it fired Gjovik
prior to completing an investigation into Gjovik’s concerns and complaints, and when it
completed its investigation it found no policy violations.²⁸³ Then in November 2023, in a Motion

²⁸³ Apple Position Statement, US DOL OSHA, *Ashley Gjovik v. Apple Inc.*, Case No. 9-3290-22-051

1 to Dismiss, Apple’s lawyers claimed Gjovik made no internal complaints prior to her
2 termination. The last Gjovik heard from Okpo in September 2021, he was contacting her about
3 her complaints and his investigation. Yet in the March 4 2022 position statement, apple’s
4 lawyers claim Gjovik’s request to not have to return to an unsafe workplace became “moot” as
5 soon as Apple put her on leave in August 2021, which would only be true if Apple knew it
6 would fire Gjovik when it put her on leave.

7 418. There is not one example prior to Gjovik’s suspension of account access and
8 termination, of Apple telling Gjovik she was in trouble, or did something wrong, or needed to
9 resolve some policy violation. Every single explanation for why Gjovik was fired on September
10 9 2021 was only offered at least six days after the fact, and the story continues to change more
11 than two years later.

12 419. Apple’s proffered explanation for terminating Gjovik does not attempt to explain
13 all of the retaliation Gjovik complained of prior to suspension and termination. Apple positions
14 itself as if Gjovik’s Twitter posts about employee privacy occurred in a vacuum and denies that
15 Apple had been mercilessly tormenting Gjovik for months prior. While it is now clear that Apple
16 suddenly forced Gjovik on indefinite administrative leave to remove her prior to the US EPA
17 inspection due to her disclosures, at the time Apple claimed it was some favor to Gjovik as they
18 investigated Gjovik’s complaints of discrimination, and retaliation for raising complaints of
19 discrimination, and retaliation for raising complaints of retaliation. Prior to the indefinite
20 administrative leave, Gjovik had already documented and complained of tangible adverse
21 employment actions including: dramatically increasing her workload, assigning her unfavorable
22 work, removing her from favorable work, repeatedly denying transfers, constructive termination,
23 repeatedly suggesting Gjovik take some sort of mental health leave and to see a psychologist for
24 mental issues, opening two sham investigations only attempting to force Gjovik to quit, and
25 refusing to remedy harassment and retaliation against Gjovik (while instead taking steps to
26 ensure the harassment and retaliation against Gjovik increased in severity).

27 420. In *Kinzel*, evidence proved one specific adverse employment action (a reassignment)
28 was motivated by a protected activity. Even though that adverse action was not the one that was
under review by the jury, because the termination occurred only a month later, the court found if an
improper motive played a role in the reassignment, there is little reason to think that it would have

1 been dispelled at the time of the termination.²⁸⁴ Further, simple inconsistencies between reasons
2 and facts have been enough to prove pretext in the “context of a concerted effort to conceal
3 major safety hazards.”²⁸⁵

4 421. As in *Kansas Gas & Electric Co v Brock*, ample evidence here supports the
5 Respondent’s justification for terminating Gjovik was pretext including that the employer failed
6 to offer any counseling or warning prior to a meeting at which it planned to dismiss the
7 Complainant, Employer only allowed a short period of time for employee to possibly remedy the
8 issue but only provided the façade of an option to remedy and no real opportunity, and
9 documentation related to the decision was unfinished and ambiguous (in *Kansas Gas* the
10 supervisor entered “?” into a form, and here the interrogator sent Gjovik an email without a
subject line).²⁸⁶

11 422. In *Godwin* substantial evidence was provided to the unreliability of the reasons
12 proffered by the employer, as all of the evidence supporting the employer's proffered reasons
13 came from statements, depositions, and declarations prepared after the employment decision was
14 made and while this litigation was in progress.”²⁸⁷

15 **E. VAGUE, INCONSISTENT, & SHIFTING EXPLANATIONS**

16 423. Pretext may be found where the employer has given shifting, contradictory,
17 implausible, uninformed or baseless justifications for its actions.²⁸⁸ Evidence that employer's
18 reason for plaintiff's termination *changed substantially over time* raises a genuine issue of
19 material fact on the issue of pretext. Pretext can be established by showing "*weaknesses,*
20 *implausibility, inconsistencies, incoherencies, or contradictions in the employer's proffered*
21 *legitimate reasons*" such that a factfinder could "*infer that the employer did not act for the asserted*
22
23
24

25 ²⁸⁴ *McCouston v. Tennessee Valley Auth.*, 89-ERA-6 (Sec'y Nov. 13, 1991). *Accord Shusterman v.*
Ebasco Servs., Inc., 87-ERA-27 (Sec'y Jan. 6, 1992).

26 ²⁸⁵ *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 511 (1993).

27 ²⁸⁶ *Kansas Gas & Electric Co. v. Brock*, 780 F.2d 1505 (10th Cir. 1985), cert. denied, 478 U.S. 1011, 92
L.Ed.2d 724, 106 S. Ct. 3311 (1986).

28 ²⁸⁷ *Godwin v Hunt Wesson*, Nos 96-56830 (1998); *Payne v. Norwest Corp.*, 113 F.

²⁸⁸ *Kwan v. Andalex Group LLC* (2nd Cir. 2013) 737 F3d 834, 846-847; *Fassbender v. Correct Care*
Solutions, LLC (10th Cir. 2018) 890 F3d 875, 887; *Vega v. Chicago Park Dist.* (7th Cir. 2020) 954 F3d
996, 1005.

1 *non-discriminatory reasons.*"²⁸⁹ A plaintiff may show pretext through her employer providing
2 inconsistent reasons for terminating her.²⁹⁰

3 424. "While an employer is certainly permitted to expand on its original reason for a
4 termination, such evidence of substantial changes to employer's proffered reason for the
5 termination permits an inference of pretext."²⁹¹ Proof that the Respondent's reasons are illogical
6 and inconsistent may "considerably assist" plaintiff's case because it suggests the Respondent
7 had cause to hide its true reasons.²⁹² Pretext was found in *Abramson* when the proffered reasons
8 for termination were vague and inconsistent, and with ongoing antagonism from the employer
9 follow protected activity.²⁹³

10 425. Apple's defense consists of roaming, pretextual, fragmented, ever changing, and
11 conflicting narratives. Between at least September 3 2021 and March 2022, Apple's explanation
12 for terminating Gjovik changed multiple times; first presented as a neutral update on the
13 investigation into Gjovik's concerns timed with publication of a defamatory article about
14 Gjovik's NLRB charge (September 3 2021), then shifting to a request to discuss
15 "inconsistencies" in Gjovik's complaints (September 7 2021), then some urgent matter related to
16 Workplace Violence and confidential information requiring a response within 'the hour'
17 (September 9 2021), then accusations Gjovik vaguely violated Apple's employment policies and
18 refused to get on the phone with the interrogator (later on September 9 2021), then implying
19 Gjovik was fired due to some of her Twitter posts on August 28 and August 30, including her
20 open and public participation in an article about work conditions at Apple (September 15 2021),
21 then claiming Gjovik was fired for secretly, maliciously leaking confidential, product-related
22 information and refusal to participate with an alleged investigation (March 2022).²⁹⁴

23 ²⁸⁹ *Santiago-Ramos v Centennial PR Wireless Corp*, 217 F.3d 46 (1st Cir 2000) .

24 ²⁹⁰ See *Waddell*, 799 F.2d at 73 (stating that district court could "appropriately" have taken inconsistent
25 explanations into account in finding causation necessary to satisfy prima facie case).

26 ²⁹¹ *Haynes v. Waste Connections, Inc.* (4th Cir. 2019) 922 F3d 219, 226—(employer's reason for
27 termination evolved from "job abandonment" to "violation of rules" to "poor attitude").

28 ²⁹² *Reeves v. Sanderson Plumbing Products, Inc.* (2000) 530 US 133, 148, 120 S.Ct. 2097, 2109; see
McKinney v. Office of Sheriff of Whitley County (7th Cir. 2017) 866 F3d 803, 810—"[t]he most striking
features of this lawsuit are the sheer number of rationales the defense has offered for firing plaintiff and
the quality and volume of evidence plaintiff has collected to undermine the accuracy and even the
honesty of those rationales"; *Vega v. Chicago Park Dist.* (7th Cir. 2020) 954 F3d 996, 1004-1005.

²⁹³ *Abramson v William Paterson College*, 260 F.3d 265 (3rd Cir 2001)

²⁹⁴ *Timmons v. Franklin Electric Coop.*, 1997-SWD-2 (ARB Dec. 1, 1998) (shifting explanations for
termination point to pretext).

1 426. Apple claimed to not know about the article Gjovik participated in published
2 August 30 2021, yet Apple was asked for comment on the article by the publisher several days
3 prior to publication. Apple later claims Gjovik tried to conceal her involvement in the article,
4 but the article includes quotes from Gjovik by name and an embedded video of images of
5 Gjovik's face.

6 427. Despite Apple claiming they fired Gjovik for "leaking" confidential information,
7 during those 10-12 days following her supposed "leaks," Gjovik said, "*the company made no*
8 *attempt to keep her from viewing any sensitive data. 'I hadn't lost any of my account access. I*
9 *still had access to the next four years of the Mac roadmap. I still had access to source code for*
10 *future releases. I still had access to concept review documents.*" One would think if Apple
11 actually thought Gjovik unlawfully leaked information, they would have removed that access
12 immediately. Or sent some sort of warning. Anything. However, there was nothing until an
13 email with no subject line from a Workplace Violence interrogator on September 9 2021.

14 428. Apple never provided Gjovik updates on the supposed "investigation" into her
15 managers, human resources, employee resource, employee relations, and Ronald Sugar. It took
16 Apple two weeks following Gjovik's suspension to even confirm to Gjovik what they would
17 supposedly investigate, they never provided any ETAs despite Gjovik's requests, nor did they
18 ever provide any updates on outcomes. This "investigation" was completely missing from
19 Apple's position statement, likely for a reason, there was no investigation – it was pretext while
20 Apple looked for a way to fire Gjovik.

21 429. In *Speegle*, evidence of pretext was found when a whistleblower was fired for
22 "insubordination" and "foul language," but the manager later told the OIG he fired the employee
23 because he "can't have any employee deliberately disobeying procedures." Later the manager
24 denied the termination was due to foul language at all. There was no record of the whistleblower
25 saying they would not follow procedures. The manager never explained which procedures they
26 thought the whistleblower planned to disregard. The manager also later admitted that the
27 employee was never known to not comply with work rules.²⁹⁵

28

²⁹⁵ *Speegle v. Stone & Webster Construction, Inc.* , ARB No. 06-041, 2005-ERA-6 (ARB Sept. 24, 2009)

1 **F. CONTRADICTIONS, MISREPRESENTATIONS, AND ILLOGIC**

2 430. The supposedly “legitimate” reasons offered by Apple were false (factually
3 untrue), creating an inference that those reasons were merely a pretext for discrimination.²⁹⁶
4 Apple claims that Gjovik’s public statements about ear canal scans and Face Gobbling were
5 enough to justify Gjovik’s immediate termination without warning, and also that Gjovik was
6 terminated for “*failure to participate in the investigatory process*” for the investigation into
7 Gjovik’s public statements twelve days earlier. Gjovik said she was happy to help but asked that
8 the communication stay in writing due to her government charges. Apple then proclaimed she
9 refused to participate, without giving her a warning or trying to negotiate. Apple never warned
10 Gjovik she could face discipline until after she implemented the discipline.

11 431. Apple accused Gjovik of failing to cooperate in an investigation when Gjovik 1)
12 replied in only two minutes 2) said she was happy to participate 3) reiterated minutes later she
13 was happy to participate.

14 432. In the *Thomas v. Arizona Public Service* Whistleblower case, pretext was found
15 when one of the proffered reasons for not promoting a whistleblower employee was he lacked
16 initiative and willingness to work overtime.” However, later, the employer admitted there were
17 actually “no occasions for the employee to work overtime, therefore willingness to work
18 overtime was not a factor.”²⁹⁷ Similarly, in the *Adams v. Coastal Production Operators*, the
19 court found pretext where one of an employer’s proffered reason for firing a whistleblower
20 employee was “abandonment of his crew” when in reality, 1) the employer fired the employee
21 before the employee left the area, 2) the employer did not ask the employee to stay with the crew
22 until a replacement arrived, and 3) alternative transportation was available for the crew.²⁹⁸

23 433. In *Donahue*, pretext was found when the employer claimed the termination was
24 due to the employee wearing a chain. There was insufficient evidence to find wearing a chain
25 constituted insubordination or any other grounds for dismissal, or that it violated safety rules.
26 Further the court found if wearing jewelry constituted valid grounds for terminating the
27 Complainant, then he would have been terminated when he was observed violating that rule.²⁹⁹

28 ²⁹⁶ *Reeves v. Sanderson Plumbing Products, Inc.*, supra, 530 US at 143, 120 S.Ct. at 2106. (“Pretext”
means a dishonest explanation, “a lie rather than an oddity or an error.”); *O’Regan v. Arbitration Forums,*
Inc. (7th Cir. 2001) 246 F3d 975, 983.

²⁹⁷ *Thomas v. Arizona Public Service Co.*, 89-ERA-19 (Sec’y Sept. 17, 1993).

²⁹⁸ *Adams v. Coastal Production Operators*, supra.

²⁹⁹ *Donahue v Exelon*, 2008-PSI-1 DOL (Dec 2008).

1 434. In *Welch*, the employer’s argument that the Complainant was suspended and later
2 discharged solely because he refused to meet with outside auditors to discuss issues the
3 Complainant had raised without a personal attorney present was not convincing. Rather, the ALJ
4 found that the evidence established that the "investigation" of the Complainant's complaints was
5 *orchestrated* by the President/CEO and Chairman, acting in concert with the outside auditors, in
6 such a manner as to *justify* the Complainant's termination. Thus, the purported "insubordination"
7 of refusing to appear without a personal attorney present was mere pretext.³⁰⁰

8 435. Quite similar to *Lawson v U*, both there and here, the employer suddenly
9 requested the employee (Gjovik) speak with an investigator (Workplace Violence) about some
10 investigation and the employee inquired what the investigation was about and worried (with
11 contemporaneous statements) that she was about to be terminated or harmed, and then the
12 employer informed the employee that the employee had not participated in the investigation. In
13 addition, again in parallel with *Lawson*, the employer never informed the employee that refusing
14 to meet with interrogators would be insubordination or noncooperation, or explain the
15 ramifications of a refusal, the employee never explicitly refused to participate in the
16 investigation, the employer never explained why their demanded format for the conversation
17 was the only option, and the employee was never given an opportunity to reconsider the
18 supposed alleged refusal.³⁰¹

19 436. Even if we believe Apple’s statements about Gjovik’s termination, that would
20 mean Apple thought Gjovik was ‘leaking’ “confidential information” as early as August 29
21 2021, yet took no actions what so ever to warn Gjovik she was under investigation or that she
22 violated a policy, took no actions to restrict Gjovik’s access to actual confidential and
23 proprietary information, including trade secrets and patent ideas, even though Apple thought
24 Gjovik was ‘leaking.’ Viewing Apple’s ‘facts’ as true, it would mean Apple thought it had a
25 senior employee with access to highly sensitive, highly confidential information who was
26 actively ‘tweeting’ statements and screenshots that included supposedly ‘confidential,
27 proprietary information’, and Apple was supposedly actively investigating Gjovik’s Twitter
28 posts, and yet, in this scenario, Apple did not read any of Gjovik’s Twitter posts after the start of
its investigation and up to Gjovik’s termination.

³⁰⁰ *Welch v. Cardinal Bankshares Corp.*, 2003-SOX-15 (ALJ Jan. 28, 2004).

³⁰¹

1 437. Further, Apple’s termination of Gjovik made little sense as Gjovik’s managers
2 had just communicated that Bertolus’ was concerned about attrition and wanted managers to
3 make an effort to ensure they do not lose employees.³⁰² One would have thought Apple would
4 have given Gjovik a warning or otherwise worked with her to retain her, especially since she
5 was coded in Apple’s HR systems as a ‘top performer’ and ‘irreplaceable.’

6 438. Gjovik notified Waible about this on May 6 2021, and then also Lagares on July
7 8 2021, and also Okpo on August 23 2021. Gjovik’s notes explained: “Helen & Dan are worried
8 about attrition and that managers need to be mindful with communication and if someone is
9 thinking about leaving to recommend other options to retain them and say that directly conflicts
10 with Dan telling me he doesn’t care if I quit Apple because of the hostile work env with
11 Dave.”³⁰³

12 439. Under Apple’s narrative, they were a safe and supportive workplace that
13 respected Gjovik and took her concerns seriously. In that case, Gjovik would have every
14 incentive to continue her employment with Apple in good standing, and to not cause trouble, as
15 she was currently making great money working at Apple (more money than she’d ever make in
16 another field) and had access to many benefits through her employment. So, then supposedly
17 despite this, Gjovik suddenly began filing supposedly false claims and making supposedly false
18 allegations “for attention.” Apple repeatedly claims that it was not investigating Gjovik until late
19 August 2021, which means Gjovik should have had no reason to think her job was in jeopardy
20 and as such had no reason to take risky actions such as going public about her concerns.

21 440. Further, Apple’s favorite inflammatory allegation is that Gjovik ‘asked to be on
22 leave’ and then lied about it. Apple first claimed Gjovik was lying when she complained the
23 leave was “indefinite” even though Apple admittedly refused to provide any ETA whatsoever
24 for next steps. Gjovik also requested to ‘come back’ from leave to attend a training she was
25 already registered for, and Apple told her ‘No’ ‘because she was on leave.’ Apple also then
26 offered that Gjovik could ask to come back even though she had just asked to come back and in
27 the same email Apple told her she cannot come back. If Gjovik was simply ‘looking for
28 attention’ she would have taken every opportunity to loudly fight Apple on these clearly abusive

302 *Larry v. Detroit Edison Co.*, 86-ERA-32 (Sec’y June 28, 1991) – Complainant was experienced and had specialized training, and always received excellent performance reviews, and the reassignment to remove her occurred at a time the Respondent was under time constraints to implement a product that required her work.

303 Ashley Gjovik email to Antonio Lagares; Date: July 8 2021 3:14pm; Subject: *Re: Introduction; Hle*

1 tactics, but instead Gjovik was mostly quiet with Apple, as she knew they wanted to fire her and
2 she did not want to be fired, and avoided initiating a conflict that Apple could use as an excuse
3 to initiate a termination.

4 441. Gjovik's actions and statements align with what one would expect from a worker
5 worried about safety issues and misconduct at her workplace, and a cover-up of complaints, who
6 then faces multiple waves of retaliation on top of her existing and well-established hostile work
7 environment, and under the increasing pressure created by the employer, the worker scrambles
8 to both protect herself from the employer as well as investigate/document the employers
9 misconduct, while balancing the employees personal injuries from the ongoing harm from the
10 employer, with a good faith attempt to do the right thing for her coworkers and society.

11 442. Apple's false narrative makes no sense. Apple positions Gjovik as some sort of
12 litigation-happy, attention-hungry loon who just wants attention and to create conflict. Apple's
13 position is that Gjovik was a successful, long-time senior employee at the company who was
14 trusted with some of Apple's most important and high-risk projects and decision making
15 processes, who excelled in law school, successfully completed a high-visibility internship in
16 Apple legal working on company-wide ethics policies, and was a trusted advisor and confident
17 with some of Apple's most senior executives – yet Gjovik woke up one morning and decided to
18 become irrationally obsessed with toxic waste and wanted to be a famous whistleblower so
19 started making frivolous complaints about safety issues and filing bad faith reports of non-
20 existent retaliation. In reality, there is no reason any person would subject themselves to these
21 legal processes, on their own and with no support, driving themselves into debt, and losing any
22 personal time or enjoyment during key years of their life.

23 443. Finally, Apple's narrative fails to mention it constructed a gas chamber in
24 Gjovik's office in 2015 and was caught by the US EPA about it in 2021 due to Gjovik's
25 complaints, which led to a mandatory US EPA inspection of Gjovik's office due to Gjovik's
26 reports and where US EPA identified a number of safety issues (all of which were the same
27 issues Gjovik was raising), and also, Apple nearly killed Gjovik in 2020 with their illegal
28 hazardous waste air emissions next only a few hundred feet from her apartment and was hoping
Gjovik never learned about any of it.

1 **G. UNNECESSARY COMMENTARY**

2 1. Like in *Hoffman v. Bossert*, here the Respondent’s supposed legitimate
3 justification for terminating the Complainant was a specific, discrete, objective issue (“lack of
4 work” or “sharing confidential information”) yet in the hearing, the Respondent then proceeded
5 to make allegations/introduce evidence about topics that were essentially personal attacks
6 against the Complainant and unrelated to the supposed legitimate justification for the
7 termination.³⁰⁴ While this line of conduct is inappropriate, the Secretary explains it is quite
8 relevant as shifts in the theory of the case indicates the supposed legitimate justification is
9 merely pretext.³⁰⁵ Similarly, making unfounded and inflammatory allegations against the
10 employee during the hearing may be found to be evidence of retaliatory animus.³⁰⁶ This may
11 include accusing the Complainant of harassment, lying, exaggerating, overreacting,
12 misunderstanding, being misguided, being “Chicken Litte,” is paranoid, experienced memory
loss, or distorting the truth.³⁰⁷

13 2. Apple’s proffered explanation for terminating Gjovik is that Gjovik made public
14 comments about Apple’s scanning of employee ears and Apple’s use of an application on
15 employee phones called “Gobbler” to gather videos and facial biometrics 24/7, and Gjovik’s
16 supposedly refusal to participate in Apple’s investigation into Gjovik making these statements.
17 Apple says this is the only reason Gjovik was fired. Yet, in the only two legal filings Apple has
made so far, Apple has taken every opportunity to take personal digs at Gjovik.

18 3. Apple’s March 4 2022 Position Statement for US DOL OSHA notes Apple
19 terminated Gjovik: “*because she violated Apple policy by intentionally disclosing confidential*
20 *information about Apple products on Twitter and, as Apple later discovered, to the press, in*
21 *clear breach of her confidentiality obligations. And she refused to meaningfully cooperate in*
22 *Apple’s investigatory process.*” (pg2). Apple explains further: “*Apple would have terminated*
23 *Ms. Gjovik for this conduct even had she never raised any safety or conflict of interest (or any*
24 *other) concerns. The only reason that Apple terminated Ms. Gjovik’s employment was due to*
25 *her own deliberate breaches of her confidentiality agreements and violations of Apple policy.*”

26 ³⁰⁴ *Hoffman v. Bossert*, 94-CAA-4 (Sec’y Sept. 19, 1995).

27 ³⁰⁵ Id – (“the Respondent testified that his only reasons for laying off the Complainant were lack of work
28 and low seniority. Respondent’s counsel introduced other evidence to the effect that the Complainant was
rude on occasion... this shift in the theory of the Respondent’s case was relevant because it strongly
indicated that lack of work and low seniority were a pretext.”)

³⁰⁶ *Hall v. U.S. Army, Dugway Proving Ground*, pg29, 1997-SDW-5 (ALJ Aug. 8, 2002).

³⁰⁷ *Hall v. U.S. Army, Dugway Proving Ground*, pg32, 1997-SDW-5 (ALJ Aug. 8, 2002).

1 *Disclosing confidential product information and refusing to meaningfully participate in internal*
2 *investigations are both bases for immediate termination under Apple’s Misconduct and*
3 *Discipline policy.” (pg10-11).*

4 4. Yet, in the March 4 2022 Position Statement, Apple then also claims Gjovik of
5 “misrepresentations” about conduct prior to the incidents Apple cites as reason for terminating
6 Gjovik (pg9), Apple misdirects on 3250 Scott Blvd claiming it was a “non-Apple site” and
7 Gjovik was now on a “personal crusade.” (pg6). Apple also notes that in March 2021 Gjovik
8 created a Twitter account which was at “the same time Ms. Gjovik asserts she began raising
9 alleged concerns with Apple,” and has “since maintained an active Twitter account.” (pg2).
None of this has to do with Face Gobbling, 3D Ear scans, or Workplace Violence interrogators.

10 5. Finally, if Apple claims the “only reason” they fired Gjovik was the Face Gobbler
11 and 3D Ear scan comments and refusing to get on the phone with the Workplace Violence
12 interrogator, and Apple is interested in offering commentary about Gjovik on topics not related
13 to those things, then there is no reason Apple would need to omit material but incriminating
14 facts. Apple should have disclosed the US EPA inspection of Gjovik’s office on August 19
15 2021, but Apple did not. Instead, Apple tried to mislead investigators writing: “Apple (and later
16 the EPA) thoroughly responded to Ms. Gjovik’s initial workplace safety concerns, and thus Ms.
17 Gjovik’s subsequent expressions of concern regarding workplace safety were unreasonable and
18 her activities lost any protected status as a matter of law.” (pg10). Apple adds that Gjovik’s
19 “continued repetitions of the same concerns were not reasonable and do not constitute
“protected activity” that can supply the predicate for a retaliation claim.” (pg11).

20 6. The August 19 2021 inspection is material and Apple engaged in misconduct in
21 attempting to conceal it from the labor agencies and from Gjovik. Pretext was found due to false
22 and misrepresenting statements by the company and a history of enforcement reports,
23 compliance reviews, and citations. One of the false statements was the employer claiming they
had never been cited for a violation.³⁰⁸

24 **H. CAT’S PAW**

25 7. Apple’s attempt at a Cat’s Paw with Bertolus failed for a number of reasons. At
26 the time Gjovik was terminated, Gjovik reported to David Powers and Dan West. Dan West
27 reported to Yannick Bertolus, and Yannick Bertolus reported to Dan Riccio, then John Ternus.
28

³⁰⁸ *Assistant Sec Mailloux v R & B Transportation*, 2006-STA-12 (DOL ARB June 2009)

1 Yannick Bertolus sent Gjovik her notice of termination, however Bertolus is very close personal
2 friends with West, working together for many years – meeting at Palm, and both moving to
3 Apple together, and continuing to work closely as well as spend personal time together. In fact,
4 the Michelin Star restaurant where Gjovik was ‘pimped and pandered’ by West, was actually
5 also one of Bertolus’ favorite restaurants, and the chef came out to talk to Gjovik while she was
6 there, talking about West and him texting about Gjovik that night, but also spending much time
7 telling her very personal stories about Bertolus (which she protested and said was inappropriate
8 for her to hear). It is unfathomable that Bertolus would have terminated Gjovik without
9 knowledge of all of Gjovik’s protected activity, including complaints about and to West, one of
10 his close personal friends.

11 8. Next, one of Gjovik’s complaints to Apple prior to being put on leave and in her
12 Issue Confirmation (pg19) sent August 23 2021, was that Dan West had previously spoken to
13 her Women’s group and shared a story where Bertolus expected Apple to get sued over a
14 product issue and as such told West he would not present about the product at meeting, and
15 instead one of West’s reports should. Gjovik referred to this casually as “obstruction of justice”
16 and it was recorded in a video with audio, which Gjovik still has and which was also shared with
17 Apple on July 29 2021. Remarks made by decisions makers like this may be admissible to show
18 pretext.³⁰⁹

19 9. In addition, a Cat’s Paw theory with Kagramanov also fails. If a manger, in
20 response to a plaintiff’s protected activity, sets in motion a proceeding by an independent
21 decisionmaker that leads to an adverse employment action, the manager’s bias is imputed to the
22 Respondent.³¹⁰ Further, Gjovik complained directly to Kagramanov about ‘witness intimidation’
23 just hours prior to her termination.

24 I. FAILURE TO FOLLOW POLICIES

25 10. Apple’s August 2021 “Manager’s Checklist for an Involuntary Termination”
26 explains that Apple’s Workplace Violence and Threat Assessment team should be consulted if

27 ³⁰⁹ *Lindahl v. Air France* (9th Cir. 1991) 930 F2d 1434, 1439 - Decisionmaker’s statement that he
believed female candidates get “nervous” and “easily upset” was direct evidence of sexual stereotyping
that raised genuine issue of fact as to pretext.

28 ³¹⁰³¹⁰ *Poland v. Chertoff* (9th Cir. 2007) 494 F3d 1174, 1182 (emphasis added); *Staub v. Proctor Hosp.*
(2011) 562 US 411, 422-423, 131 S.Ct. 1186, 1194—vice president of human resources relied upon
reports by two biased supervisors in terminating employee who claimed supervisors were retaliating
against him for his military service.

1 the manger has “security concerns regarding [their] employee’s departure.”³¹¹ It also says that
2 the manager must “initiate a termination form in Merlin at least three business days prior to the
3 termination date.”³¹² The checklist also says that the manager should ensure all prototype
4 hardware is returned to Apple prior to the employee leaving Apple.

5 11. Apple’s “Improving Performance” guide for managers advises when Apple
6 managers “*identify a performance issue*” they should “*promptly initiate an open honest*
7 *conversation with the employee to discuss potential causes for the performance issue and agree*
8 *on steps they can take to improve.*”³¹³ The manager should “*take notes during each*
9 *performance-related meeting or conversation and record any actions the employee takes or does*
10 *not take to improve performance.*” Apple’s guidelines for coaching meeting includes “Don’t
11 delay. Meet with the employee as soon as you’re aware of a potential performance issue.”³¹⁴ The
12 guide also says “*Give the employee an opportunity to respond either during or after the meeting.*
13 *Some employees may find it easier to respond in writing rather than in face-to-face*
14 *conversation.*” The guide adds: “*Give direction. Help the employee understand what needs to*
15 *change and why. Work with them to identify possible solutions, and clearly explain the*
16 *consequences if the performance issue does not improve.*”³¹⁵

17 444. Not only did Apple not follow the majority of the five-page checklist with its
18 termination of Gjovik, but it appears the emails from the Workplace Violence team asking to
19 talk to Gjovik “*within the hour,*” may have been the “*final meeting.*” If that is true, Apple
20 misrepresented its intent (claiming it was an investigation) and Apple’s refusal to discuss the
21 matter in email with Gjovik, only over phone, points to additional animosity towards Gjovik and
22 unlikely planned unlawful actions for the phone call it did not want written.

23 445. Before Gjovik was fired, she had excellent performance ratings and an absence of
24 prior complaints against her. Once Apple had indicated they were upset with Gjovik’s protected
25 activity and continued to advise Gjovik to not report safety concerns to her coworkers or to the
26 government, nor to discuss concerns about work conditions with her coworkers, Apple then
27 never gave Gjovik another performance review.

28 ³¹¹ Apple Inc, Manager’s Checklist for an Involuntary Termination, Rev US-Aug-2021

³¹² Id.

³¹³ Apple Inc, For Managers, Driving Performance, Improving Performance.

³¹⁴ Apple Inc, For Managers, Driving Performance, Improving Performance.

³¹⁵ Apple Inc, For Managers, Driving Performance, Improving Performance.

1 446. Not only did Apple refuse to give Gjovik any warnings prior to termination, a
2 clear sign of pretext,³¹⁶ Apple also somehow drug out Gjovik’s mid-year and annual review
3 without ever providing them to her. In 2020, Gjovik’s annual performance review was dated
4 June 2020. However, by the time Gjovik was terminated in September 2021, she had not
5 received her mid-year or annual performance review for 2021 – which was highly unusual and
6 against Apple policies.

7 447. The California Supreme Court held that the proper inquiry in adjudicating a
8 breach of contract claim is not whether “the employee in fact commit[ted] the act leading to
9 dismissal.”³¹⁷ Rather, it is whether “the factual basis on which the employer concluded a
10 dischargeable act had been committed [was] reached honestly, after an appropriate investigation
11 and for reasons that are not arbitrary or pretextual.”³¹⁸ An “adequate investigation,” the Court
12 held, “includes notice of the claimed misconduct and a chance for the employee to respond.”³¹⁹

13 448. In *Florek*, the employee manual provided that in discharging an employee,
14 employer will give notice of the problem and an opportunity to correct the situation, and that if
15 this is unsuccessful, employer will give notice before terminating. The ALJ found additional
16 evidence of pretext because, while employer relied on Plaintiff’s alleged violations of the
17 manual to fire him, the company disregarded the pre-termination procedures contained in that
18 same manual when it discharged Plaintiff. Substantial evidence supports the ALJ’s finding since
19 it is undisputed that Plaintiff was fired without any notice.³²⁰

20 449. In *Clean Harbors*, the court found it significant that Plaintiff received no oral or
21 written warnings about any of the three incidents which employer says justified his discharge.
22 That is so although employer had agreed to document disciplinary violations. The excuse that
23 employer gave for its failure to warn Plaintiff is that there was no time to give warnings. That
24 excuse is weak, given that the “violations” of the chain of command hardly triggered
25 emergencies.³²¹

26 ³¹⁶ *Clean Harbors v Herman*, 146 f3d 12 (1st cir 1998) – (evidence that the termination justification was
27 pretext for retaliation included that the employer provided no warnings to the employee prior to
28 termination).

³¹⁷ *Cotran v. Rollins Hudig Hall Int’l., Inc.*, 17 Cal. 4th 93, 107 (1998),

³¹⁸ *Id* at 107.

³¹⁹ *Id* at 108; *Conducting an Effective Workplace Investigation*, VLR994 ALI-ABA 459, 465.

³²⁰ *Florek v Eastern Air Central*, 2006-AIR-9 (DOL ARB) May 2009 .

³²¹ *Clean Harbors v Herman*, 146 F.3d 12 (1st Cir 1998).

1 450. In *Deitz*, a constructive discharge was found to be but for an employee’s
2 protected activity due to a wide array of circumstantial evidence connecting employee’s
3 protected activity and the adverse personnel actions,” including: temporal proximity (retaliation
4 beginning a mere two days after reporting an issue, and termination a little more than a month
5 after), evidence of pretext (prior performance review was “very positive”), inconsistent
6 application of employer policies (the retaliatory actions undermined the employers own policies
7 and the response to employees concerns did not even follow the employers own Whistleblower
8 Policy), and inconsistent explanations for the adverse personnel actions (the justification
9 provided was not credible, consistent, or supported by evidence).³²²

10 451. Gjovik never concealed or misrepresented her activities. Gjovik made disclosures
11 under her own name and never denied she made the disclosures she did. Further, Apple’s
12 security training warned employees that even if employees ‘leak’, that they are unlikely to face
13 discipline unless they lie about it.³²³ Apple’s termination of Gjovik failed to follow disciplinary
14 procedures, disregarded termination procedures in manual, and deviated from policy/practice.

15 452. Finally, OSHA’s description of the “workplace violence” function at the
16 workplace discusses threats, physical assaults, and aggravated assaults.³²⁴ Apple’s Workplace
17 Violence Policy explains “Workplace violence includes, but is not limited to: physical
18 aggression, verbal or written threats, stalking, or destruction of property.”³²⁵ Apple lists
19 examples of “Cause for termination” under the Workplace Violence policy including:
20 participation in a fight, physical attacks, throwing objects, destroying property, threats that
21 express an intent to inflict harm, possession of firearms or explosives on Apple premises, any act
22 that might endanger the safety or lives of others.³²⁶ It’s entirely unclear why this interrogator
23 was reaching out to Gjovik except to intimidate her. An employer's failure to follow its normal
24 procedures can suggest deliberate retaliation.³²⁷

25 ³²² *Dietz v Cypress Semiconductor*, 2014-SOX-2 (DOL ARB) (March 2016).

26 ³²³ The Outline, Leaked recording: Inside Apple’s global war on leakers, June 20 2017, (“Nine times out
27 of 10, when people get in trouble at Apple, [the Global Security executive] says, it’s because they tried to
28 cover up a mistake”). <https://theoutline.com/post/1766/leaked-recording-inside-apple-s-global-war-on-leakers>

³²⁴ Workplace Violence, Practical Law Practice Note 7-505-7511

³²⁵ Apple Inc, Policies & Notices, Workplace Violence

³²⁶ Id.

³²⁷ *DeFord v. Secretary of Labor*, 700 F.2d 281, 287 (6th Cir. 1983).

1 **J. DISPARATE TREATMENT**

2 453. When disciplinary action, including termination from employment, is involved,
3 the past practice of the Respondent in similar situations is relevant to determining whether there
4 has been disparate treatment, which may provide highly probative evidence of retaliatory
5 intent.³²⁸ A Complainant is not required, however, to establish disparate treatment in
6 comparison to other employees, or other whistleblowers, in order to establish retaliatory
7 intent.³²⁹ Apple claims it fired Gjovik for making public statements about Apple’s “Face
8 Gobbler” iOS application that secretly gathers videos and biometrics 24/7 for Face ID algorithm
9 development, Apple’s 3D scanning of employee ears, and Gjovik refusing to “cooperate” with
10 the Workplace Violence interrogator.

11 454. An Apple Engineering Manager, Robert McKeon, led the Video Engineering
12 Face ID teams for years, and was DRI for the Gobbler/Glimmer app, and also posted prolifically
13 & publicly about Apple & Face ID internal strategy, for years. McKeon’s LinkedIn notes from
14 March 2016 through Jul 2017, he worked on Face ID on the iPhone X including “*DOE [Design*
15 *of Experiment] for multiple user studies, “Engineering User Studies DOE, Collection, and*
16 *Analysis.”* McKeon posted publicly that in 2018, he worked on “*Face ID / prototype data*
17 *collection, logging analysis, DRI for Internal tools for Video Engineering, Coordinated efforts*
18 *for data collections to improve RGB Face Detector and Portrait Mode, Engineering User*
19 *Studies & Carry data plus Analysis...*” McKeon posted publicly that in 2019 he worked on
20 “*Face ID internal logs processing pipeline and dashboard, Face ID exploration DOE and*
21 *analysis, Face ID internal logging analysis, Internal data collection app DRI, & 3D point cloud*
22 *analysis...*”

23 455. McKeon’s public LinkedIn and Medium posts have included much internal Apple
24 information stretching back to at least 2018 & his LinkedIn implies he’s been promoted and
25 frequently given increasing responsibility, despite his public disclosures. On July 2 2018,
26 McKeon documented Apple’s product development process and posted it on LinkedIn titling it
27 “*Chaos Inducted Prioritization.*” On Feb 26 2019, McKeon posted on LinkedIn about his work
28 on Face ID algorithms. He said, he “*worked on Design of Experiment for user studies, failure*
29 *analysis, and deep net training.*” McKeon said, “*There was a large list of unknowns because*
30 *nobody had lived on a phone with Face ID. We had to imagine how people would use the phone*

328 *Timmons v. Mattingly Testing Services* , 95- ERA-40 (ARB June 21, 1996).

329 *Timmons v. Mattingly Testing Services* , 95- ERA-40 (ARB June 21, 1996).

1 and in what ways different from Touch ID to see what data to test. This involved designing the
2 data collection, collecting the data, and analyzing it. We also did any engineering studies
3 requested by others and analyzed the resulting data to understand if we needed more data.”
4 McKeon wrote that in December he was working on “a large make-up study [he] had spent
5 months designing and doing small engineering studies to help support the DOE.” He said he,
6 “found a lot of incorrect labels from the big user study [he] designed. ...[He] fixed all the labels
and finish the analysis.”

7 456. On Jan 9 2019, McKeon posted to LinkedIn an article called “Data Collection”
8 where he wrote, “During the lead up to Face ID being launched, my team went out and collected
9 a large set of potential aggressors to see if we were missing anything in our larger data
10 collections, things would be normal to a regular user.” 894 On May 13 2019, McKeon posted to
11 LinkedIn about the work Apple did on Face ID, that “Tons of data was being collected at the
12 time to cover all the bases.” McKeon was not fired.

13 457. On September 5 2020, Apple VP of Marketing, Greg Joswiak (“Joz”) was
14 interviewed by Wired about Apple AirPods. “We had done work with Stanford to 3D-scan
15 hundreds of different ears and ear styles and shapes in order to make a design that would work
16 as a one-size solution across a broad set of the population,” Joswiak says. “With AirPods Pro,
17 we took that research further – studied more ears, more ear types. And that enabled us to
18 develop a design that, along with the three different tip sizes, works across an overwhelming
percentage of the worldwide population.” Joz was not fired.

19 458. On December 9 2021, two Apple Product Design executives were interviewed by
20 Wallpaper about Apple’s product design team. The article said, “When AirPods’ development
21 began a decade or so ago, human factors researcher Kristi Bauerly found herself researching
22 the ‘crazily complex’ human ear. ‘We moulded and scanned ears, worked with nearby
23 academics, focusing on outer ears for the earbud design and inner ears for the acoustics,’ she
24 says. Thousands of ears were scanned, and only by bringing them all together did the company
25 find the ‘design space’ to work within. ‘I think we’ve assembled one of the largest ear libraries
26 anywhere,’ Hankey says. ‘The database is where the design starts,’ Bauerly continues, ‘and then
we iterate and reiterate.’” The Apple employees were not fired.

27 459. Apple formally announced Face ID on September 12, 2017. However, details of
28 Face ID were “leaked” months prior. On July 30 2017, the Apple Release Mgmt team posted
HomePod firmware publicly which included unreleased product details in the code, including

1 Face ID & iPhone X. The press covered the leak, writing: *“code indicates the existence of infra-*
2 *red face unlock in BiometricKit, which is the framework responsible for Touch ID. The code*
3 *further suggests that Apple’s face unlock feature will be able to detect partially occluded face*
4 *and faces from various angles. The codename for the project Pearl ID. The code also shows the*
5 *iPhone 8 codename.”*

6 460. Face ID was further “leaked” on Sept 8 2017 when the to-be released iOS build
7 was made public. This leak was also covered by the press, writing: *“Leaked iPhone 8 firmware*
8 *reveals animated emoji, Face ID, and updated AirPods.”* That leak also included *“details on*
9 *wireless charging and a status bar update in iOS 11. According to the leak, the new facial*
10 *recognition system will be capable of substituting for Touch ID everywhere the current system is*
11 *used, both unlocking the phone and confirming purchases on iTunes, the App Store, and Apple*
12 *Pay.”* One outlet wrote, *“Face ID appears to be the official marketing name for what’s been*
13 *referenced as Pearl ID, the facial recognition features that will likely replace the Touch ID*
14 *fingerprint recognition feature.”*

15 461. Gjovik was told by numerous people that both of those leaks came from her
16 previous team in Software Engineering, currently run by Brad Reigel (the guy who used to
17 yelled at her and bring ammo to work). Gjovik was told how the leaks happened (which she will
18 not share here, but an testify if needed). She was told both leaks were attributed directly to Brad
19 Reigel via his negligence, as well as the negligence of Venkat Memula (Gjovik’s previous
20 director). Gjovik was told that Memula was demoted from a Director to a Senior Manager
21 following the leaks and that Reigel was given a 30-day notice, directly by Tim Cook, to find a
22 new job at Apple or else would be fired.

23 462. Apple accuses Gjovik of sharing information (that was already generally known
24 about a feature released to the public nearly four years ago and/or a topic protected by the
25 California Constitution) and using that to justify their egregious termination of Gjovik.
26 Meanwhile, Reigel and Memula were responsible for actually “leaking” actual “IP” to the public
27 before a product announce but were not fired. Reigel and Memula were also notorious for a
28 history of bad behavior & discipline during their Apple tenures. Not fired. The difference?
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3 history of bad behavior & discipline during their Apple tenures. Not fired. The difference?
4 Reigel and Memula did not participate in protected activity.

5 464. During the 2017 announce of Face ID, Marketing VP Phil Schiller said, “*To*
6 *create Face ID we worked with thousands of people across the world and the team took over a*
7 *billion images*” and with that, “*they developed multiple neural networks.*” 903 Schiller said,
8 “*the team even worked with professional mask makers and make-up artists in Hollywood to*
9 *prevent attempts to beat Face ID.*” He said, “*these are actual masks used by the engineering*
10 *team to train the neural networks.*” Phil Schiller was not fired.

11 465. Further, specific positive assessments of Complainant’s performance by
12 coworkers and other managers may constitute “specific and substantial” circumstantial evidence
13 that the Respondent’s negative assessment of the Complainant was pretextual.³³⁰ In 2020,
14 Gjovik’s review had exceeded and achieved. In 2019, Gjovik’s review had exceeded and
15 achieved. In 2018, Gjovik’s review had exceeded and achieved, and she was promoted from an
16 ICT3 to ICT4. In 2021, Apple went out of its way to not provide Gjovik her mid-year or annual
17 performance review, despite insisting it was required for all employees, and Gjovik’s manager
18 reminding other managers to complete the reviews, despite Powers not providing Gjovik her
19 reviews.

18 **K. MOTIVE: REASON TO RETALIATE**

19 466. In absence of other evidence of pretext, establishing retaliatory animus generally
20 requires the employer has some motivation or incentive to retaliate against the employee for the
21 employee’s protected activity.³³¹ Here, Apple has a strong incentive to retaliate against Gjovik.
22 Apple removed Gjovik so she could not gather more evidence about what was occurring. Apple
23 cast doubt on Gjovik’s character so people were less likely to believe her complaints.

24 467. “Concealment... is a critical element of unsafe productions.... If the true dangers
25 of the workplace were revealed to employees, it might be hard to attract and keep employees, or
26 firms might need to raise wages necessary to attract willing workers. The cost of cleanup, added
27 safety training and equipment, and the risk of medical bills and potential lawsuits almost

28 ³³⁰ *EEOC v. Boeing Co.* (9th Cir. 2009) 577 F3d 1044, 1051.

³³¹ *M.C. Tucker V Morrison & Knudson*, page 3, ARB CASE NO. 96-043 COMPLAINANT, ALJ CASE
NO. 94-CER-1 (February 28, 1997).

1 guarantee that many, if not most, companies will conceal rather than reveal [environmental]
2 violations and employee risks.”³³²

3 468. Apple has a long-time pattern and practice of noncompliance with local, state,
4 and federal health/safety and environmental laws. The company even agreed to a consent decree
5 with CalEPA DTSC in 2016 due to egregious violations of the Hazardous Waste Control Law
6 for universal waste (§25100), including operating two off-book waste processing facilities that
7 unlawfully processed over 2,000,000 pounds of universal waste. DTSC’s complaint noted that
8 the operator processed waste “without informing the Department of the existence of [the] facility
9 or complying with the Department’s universal waste regulations.” DTSC also complained that
10 the operator had shipped hazardous waste as non-hazardous waste, used a Transporter not
11 authorized to store or treat the operator’s hazardous waste, and even violated international law
12 by shipping unauthorized hazardous waste to Canada.³³³

13 469. Apple was also recently cited and fined in North Carolina for RCRA violations,
14 including transporting and disposing of hazardous waste by unregistered Transporters and
15 Treaters, failure to conduct proper waste determinations, failure to register as a Large Quantity
16 Generator, failure to track hazardous waste transports with manifests, and failing to submit
17 reports to federal and state regulators about hazardous waste activities onsite. North Carolina’s
18 Division of Waste Management found Apple’s handling of hazardous waste was “negligent”
19 with a major deviation from legal requirements and with a major risk of harm to human health
20 and the environment.³³⁴ There are many other incidents in California and other states as well.

21 470. Apple was also grossly dishonest about Gjovik’s protected activity – including a
22 conspiracy to conceal from Gjovik that her disclosures led to an US EPA inspection of her
23 Apple office, that the US EPA identified a number of issues including active vectors for
24 exposure to TCE and other chemicals, and that Apple was operating a secret semiconductor
25 fabrication plant venting metric tons of solvent fumes directly into the apartment windows where
26 Gjovik lived when she got severely ill from solvent fumes.

27 471. Apple not only knew what it was doing, but the emissions were a business
28 decision in order to be able to report reduced waste sent to landfills. Apple could emit chemicals

³³² Benson and Simpson, *White-Collar Crime: An Opportunity Perspective*, Routledge, page 131 (2009).

³³³ California DTSC’s lawsuit against Apple over universal waste and resulting consent agreement in 2016 can be found at People of the State of California ex rel DTSC v Apple Inc, Case No. 16CV303579.

³³⁴ North Carolina’s lawsuit against Apple over Hazardous Waste Rules can be found at In Re: Apple Computer Inc., NCR000149526, Docket #2017-04.

1 without auditing but could not sent waste out as easily. So, as Apple’s hazardous waste output
2 peaked in 2018, Apple began finding ways to dispose of that waste extralegally including
3 through air emissions and flushing it into the sewers. Apple’s 2020 Environmental
4 Responsibility Report says: “*In 2018, we launched our commitment to send zero waste to landfill*
5 *for our offices, retail stores, and data centers. That commitment aims to eliminate waste sent to*
6 *landfills from these sites.*”³³⁵ Apple added, “*Hazardous waste generated at Apple facilities is*
7 *another challenge we’re actively addressing*” without further elaboration.³³⁶

8 472. Apple (Waibel, Okpo, Steiger, Jain) told Gjovik her office was safe when they
9 knew about the HVAC/TCE issues, and while Gjovik suspected Apple was misleading her about
10 the air testing and cracked floor, she would have never thought to look into the HVAC if it were
11 not for Apple’s statements. Apple (West, Powers) told Gjovik to pursue her claims against Irvine
12 Company for her chemical exposure in 2020, when Apple (Real Estate, Legal, others) knew it
13 was Apple who exposed Gjovik to chemicals, in additional to or instead of Irvine Company.
14 Apple’s encouragement of Gjovik to pursue the real estate company misdirected Gjovik and she
15 relied to her detriment on Apple’s statements. Apple (Okpo, Lagares, Stieger, Rubenstein,
16 Powers, West) knew the US EPA was going to inspect Gjovik’s office due to Gjovik’s
17 complaints about unsafe work conditions and CERCLA non-compliance, yet Apple concealed
18 the inspection from Gjovik, and Apple (Lisa Jackson) misled Gjovik by engaging in a public
19 relations blitz with the current head of the US EPA (Michael Reagan) at Apple Park the day
20 before the inspection, causing Gjovik to believe the US EPA had ignored her complaints and
21 causing Gjovik to not follow up with the US EPA until months after she was fired.

22 473. “The [white-collar crime] opportunity structure of illegal hazardous waste
23 disposal has two key features. First, companies are trusted to be responsible for disposing of
24 waste in a legal manner. Hence, they are in control regarding whether they do so or not. Second,
25 if they choose to dispose of toxic waste illegally, the effects of their illegal actions are not
26 immediately obvious and indeed are often delayed for considerable periods of time.... The
27 opportunity for environmental crime arises because it is difficult and costly to monitor whether
28 companies are or are not complying with the law. Hence the risk of the offense being exposed is
low... Environmental offenses may be exposed in a variety of different ways, including self-

³³⁵ Apple, Environmental Responsibility Report, 2020,
https://www.apple.com/environment/pdf/Apple_Environmental_Progress_Report_2020.pdf

³³⁶ Id.

1 reports, inspections, whistleblowing [by employees], and accidental discovery [by the public].
2 Whistleblowing is a potentially important source of exposure and hence risk for companies that
3 violate environmental regulations. When a company knowingly reengages in environmental
4 crime, efforts are made, of course, to conceal the activity.”³³⁷

28 ³³⁷ Benson and Simpson, *White-Collar Crime: An Opportunity Perspective*, Routledge, page 124-125, (2009).

XI. COMPLAINANT’S REQUESTS

474. Gjovik will require discovery for the hearing as the OSHA investigator refused to provide Gjovik anything that Apple (Respondent) provided other than Apple’s position statement (and even then, still omitted Apple’s exhibits).³³⁸ Gjovik filed a FOIA request for the US DOL case file, however the FOIA team told her to expect “severe delays” in the release of those documents.

A. STATUTE OF LIMITATIONS

475. Gjovik requests an exception to the 30-day rule due to the existence of a intertwined Hostile Work Environment. Gjovik also requests an exception due to equitable estoppel and equitable tolling, as Apple’s placement of Gjovik on administrative leave, undertaking a farcical investigation Apple claimed must be kept confidential, and Apple’s use of false assurance and misleading “positive signals” to Gjovik, while also concurrently hiding the US EPA inspection from Gjovik (and the semiconductor fabrication facility air emissions) was all a deliberate attempt by Apple to induce and/or lull Gjovik into not filing promptly, and to fraudulently conceal facts about wrongful actions by Apple critical to the basis of the cause of action within the limitations period.³³⁹ Gjovik would have filed sooner if it was not for Apple’s misleading and confusing representations and conduct.³⁴⁰

476. “Equitable tolling is justified when a Respondent’s complaint handling process causes confusion that deters a complainant from timely filing a complaint.”³⁴¹ In addition the issues noted above, Apple’s persistent coercion for employees to only report issues internally, to keep issues and investigations confidential and private, and claim that any type of internal information is confidential, all prevent employees from promptly filing charges. Gjovik requests an exception to the 30-day rule due to Gjovik filing a number of complaints about retaliation for

³³⁸ Part 24.104(c); US DOL, *Investigator’s Desk Aid to the Whistleblower Protection Provisions of Six Environmental Statutes*, supra at page 12.

³³⁹ *Larry v. Detroit Edison Co.*, 86-ERA-32 (Sec’y June 28, 1991). See also *School Dist. of Allentown v. Marshall*, 657 F.2d 16 (3d Cir. 1981); *English v. Whitfield*, 858 F.2d 957 (4th Cir. 1988); *Rose v. Dole*, 945 F.2d 1331 (6th Cir. 1991)(per curiam); *Larry v. Detroit Edison Co.*, 86-ERA-32 (Sec’y June 28, 1991).

³⁴⁰ Id.

³⁴¹ *Holden v. Gulf States Utilities*, 92-ERA-44 (Sec’y Apr. 14, 1995), Slip op. at 14-15.

1 this protected conduct prior to her formal complaint with US DOL OSHA, including with
2 coworkers, management, and other government agencies.³⁴²

3 477. If for some reason the adverse action occurring prior to the thirty days cannot be
4 actionable, then Gjovik will move to include them as relevant evidence probative of Apple's
5 decision-making process with regard to the adverse actions occurring within the thirty-day
6 limitations period.³⁴³

7 **B. AMENDMENTS**

8 478. As discussed, Gjovik respectfully requests to amend her OALJ case to add RCRA
9 and CAA claims, in addition to CERCLA.

10 479. When a Complainant does not learn about certain misconduct and motives of the
11 Respondent until after the termination, the Complainant may add those additional claims to her
12 case if she submits a written complaint within 30 days of obtaining that knowledge.³⁴⁴ Gjovik
13 did that here, as noted in the US DOL complaints section. Further, the filing period and statute
14 of limitations is controlled by knowledge of an adverse action, not based on knowledge of facts
15 to establish a retaliatory motive.³⁴⁵ Thus, new allegations of motive may be added later in the
16 case, such as during the OALJ process after the OSHA process.

17 480. Similarly, if OSHA fails to add all appropriate statutes to the whistleblower case,
18 those statutes may still be added during the OALJ hearing if those statutes are based on the same
19 theory of liability as the original allegations of misconduct, or subsequent amendments during
20 the investigation.³⁴⁶ It is the substance of the complaint that determines the statutory coverage.³⁴⁷
Further, Gjovik did expressly ask OSHA about adding RCRA and CAA back in 2021.

21 ³⁴² *Harrison v. Stone & Webster Engineering Group*, 93-ERA-44 (Sec'y Aug. 22, 1995). (A foreman
22 who had been demoted after making safety complaints on behalf of the crews, engaged in further
23 protected activity when he communicated the situation to the crews, which resulted in their refusal to
24 work unless their safety concerns were addressed. The Secretary characterized this communication as "an
early version of [the Complainant's] section 211(b) discrimination complaint, which is protected under
section 211(a)(1)(D) as a proceeding commenced or about to be commenced).

25 ³⁴³ *Raymond L. Schlagel v Dow Corning Corporation*, ARB CASE NO. 02-092, ALJ CASE NO. 01-
CER-1, April 30, 2004; *Hill v. U.S. Dep't of Labor*, 65 F.3d at 1335, quoting *Dayco Corp. v. Goodyear
Tire & Rubber Co.*, 523 F.2d 389, 394 (6th Cir. 1975).

26 ³⁴⁴ *Freels v. Lockheed Martin Energy Systems, Inc.*, 95-CAA-2, 94-ERA-6 (ARB Dec. 4, 1996).

27 ³⁴⁵ *Ottney v. Tennessee Valley Authority*, 87-ERA-24 (ALJ July 24, 1991); *Billings v. Tennessee Valley
Authority*, 86-ERA-38 (Sec'y June 28, 1990), *aff'd without opinion*, 923 F.2d 854 (6th Cir. 1991).

28 ³⁴⁶ *Proud v. CECOS International*, 83-TSC-1 (Sec'y ar. 30, 1984); *Porter v. Brown & Root, Inc.*, 91-
ERA-4 (ALJ ar. 9, 1992).

³⁴⁷ *Aurich v. Consolidated Edison Co. of New York, Inc.*, 86-CAA-2 (Sec'y Apr. 23, 1987); *Ray v.
Tennessee Valley Authority*, 88-ERA-14 (Sec'y Jan. 25, 1991).

1 **C. REMEDIES**

2 481. If the complainant has demonstrated by a preponderance of the evidence that the
3 protected activity caused or was a motivating factor in the adverse action alleged in the
4 complaint, relief may not be ordered if the respondent demonstrates by a preponderance of the
5 evidence that it would have taken the same adverse action in the absence of the protected
6 activity.³⁴⁸ Here, if the ALJ concludes that Apple Inc has violated the law, under Title 29,
7 Subtitle A, 24.109(d)(1), the ALJ may direct Apple to take appropriate affirmative action to
8 abate the violation, including reinstatement of the complainant to her former position, together
9 with the compensation (including back pay), terms, conditions, and privileges of that
10 employment, and compensatory damages.

11 482. Apple’s retaliation against Gjovik caused Gjovik to lose pay, benefits, stock
12 options, 401K savings, future earnings; to accrue credit card and student loan debt; damaged
13 credit score; caused Gjovik to liquidate and spend all her savings; to be unable to work in prior
14 profession and denylisted from most companies; lost vacation paid time off and forsaking any
15 opportunity for vacations or pleasure in order to support the litigation; future career prospects
16 severely diminished due to the allegations against her; reputational harm; cost Gjovik in legal
17 fees and attorneys fees for herself; and Apple’s conduct caused Gjovik severe distress and
18 injury. Further, Apple severely physically injured Gjovik with its CERCLA, RCRA, and CAA
19 violations and likely increased Gjovik’s lifetime risk for cancer and other diseases, taking years
20 off of her life expectancy.

21 483. Under CERCLA, Gjovik prays for ‘make whole’ compensatory relief including
22 payment of back pay with interest, compensation for special damages including attorneys’ fees
23 and other expenses, posting of notices, expungement of Gjovik’s record, and either reinstatement
24 or front pay.³⁴⁹

25 484. Under the Clean Air Act, Gjovik prays for ‘make whole’ compensatory relief
26 including payment of back pay with interest, compensation for special damages including
27 attorneys’ fees and other expenses, and either reinstatement or front pay.³⁵⁰ Under the Clean Air
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³⁴⁸ 24.109(b)(2); *Ruud v. Westinghouse Hanford Co.* , 88-ERA-33 (ALJ Mar. 15, 1996),

³⁴⁹ US DOL, *Filing Whistleblower Complaints under the Comprehensive Environmental Response, Compensation and Liability Act*, page 2,

<https://www.osha.gov/sites/default/files/publications/OSHA3813.pdf>

³⁵⁰ US DOL, *Filing Whistleblower Complaints under the Clean Air Act*, page 2,

<https://www.osha.gov/sites/default/files/publications/OSHA3784.pdf>

1 Act, Gjovik also requests exemplary damages.³⁵¹ Apple demonstrated "reckless or callous
2 indifference to the legally protected rights of others" and engaged in "conscious disregard of
3 those rights."³⁵²

4 485. Under RCRA/SWDA, Gjovik prays for 'make whole' compensatory relief
5 including payment of back pay with interest, compensation for special damages including
6 attorneys' fees and other costs and expenses, and either reinstatement or front pay.³⁵³

7 486. There is no concern about Apple being unable to pay such damages. In only
8 2023, Apple claimed net sales of \$383.3 billion (\$162.6 billion in the United States) and net
9 income of \$97.0 billion.³⁵⁴

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25 ³⁵¹ 42 U.S.C. §7622(d) – ("... appropriate relief including, but not limited to, injunctive relief,
26 compensatory, and exemplary damages."); *Jayko v. Ohio Environmental Protection Agency*, Slip op.
27 page 97, 1999-CAA-5 (ALJ Oct. 2, 2000) – ("...I also find that Mr. Jayko is entitled to exemplary
28 damages under the CAA...").

³⁵² *Evans v. Baby-Tenda*, 2001-CAA-4 (ALJ Sept. 30, 2002).

³⁵³ US DOL, *Filing Whistleblower Complaints under the Solid Waste Disposal Act*, page 2,
<https://www.osha.gov/sites/default/files/publications/OSHA3815.pdf>

³⁵⁴ *Id.*

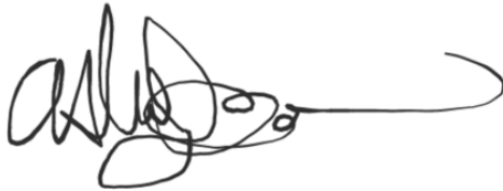
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XII. CONCLUSION

487. This complaint is drafted to be accurate as to the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances. This complaint and request for a hearing is not being presented for any improper purpose. The claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law. The factual contentions have evidentiary support or, if specifically, so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

488. I swear under the penalty of perjury the foregoing is correct and accurate.

Signature:



/s/ Ashley M. Gjovik, Pro Se Complainant

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