UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21

APPLE INC.

and **Cases 32-CA-282142**
32-CA-283161

ASHLEY MARIE GJØVIK, an Individual

ANSWER TO CONSOLIDATED COMPLAINT

Pursuant to Sections 102.20 and 102.21 of the Rules and Regulations of the National Labor Relations Board ("NLRB" or "Board"), Apple Inc. ("Apple" or "Respondent"), through its undersigned counsel, submits the following Answer to the Consolidated Complaint ("Complaint") according to the Complaint's numbered paragraphs. To the extent the Complaint's introduction contains allegations and legal conclusions, each and every one is denied.

RESPONSES TO SPECIFIC ALLEGATIONS

1. (a) The original charge in Case 32-CA-282142 was filed by the Charging Party on August 26, 2021, and a copy was served on Respondent by U.S. mail on August 30, 2021.

(b) The amended charge in Case 32-CA-282142 was filed by the Charging Party on April 1, 2022, and a copy was served on Respondent by U.S. mail on April 4, 2022.

(c) The charge in Case 32-CA-283161 was filed by the Charging Party on September 16, 2021, and a copy was served on Respondent by U.S. mail on September 20, 2021.

Response:

On information and belief, Apple admits the allegations of Paragraph 1(a).

On information and belief, Apple admits the allegations of Paragraph 1(b).

On information and belief, Apple admits the allegations of Paragraph 1(c).

Apple denies each and every remaining allegation and legal conclusion contained in Paragraphs 1(a), 1(b), and 1(c).

2. (a) At all times, Respondent, a California corporation with a headquarters at One Apple Park Way, Cupertino, California has retail facilities throughout the United States, has been engaged in the development, manufacture, and retail sale of consumer electronics and software.

(b) Annually, in the course and conduct of its operations, Respondent derives gross revenues in excess of $500,000, and purchased and received at its California facilities products, goods and materials valued in excess of $5,000 directly from points outside the State of California.

Response:

Apple admits the allegations of Paragraph 2(a).

Apple admits the allegations of Paragraph 2(b).

Apple denies each and every remaining allegation and legal conclusion contained in Paragraphs 2, 2(a), and 2(b).

3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

Response: Apple admits the allegations of Paragraph 3.

4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act or agents of Respondent within the meaning of Section 2(13) of the Act:

Jenna Waibel Corporate Employee Relations Representative

David Powers	Software Development Engineering Director
Ekelemchi Okpo	Corporate Employee Relations Representative

Response:

Because "material times" is not defined in the Complaint, Apple is without a basis to respond to any and all allegations set forth in Paragraph 4 relating to "material times" and therefore denies that allegation.

Apple admits that Jenna Waibel was an Employee Relations representative until approximately April 2024. Apple admits that Waibel was a supervisor within the meaning of Section 2(11) of the Act from approximately summer 2021 until approximately April 2024. Apple admits that during her employment Waibel was an agent of Apple within the meaning of Section 2(13) of the Act for some, but not all, purposes. Apple denies each and every remaining allegation and legal conclusion contained in Paragraph 4 relating to Waibel.

Apple admits that David Powers is a Director. Apple admits that Powers is a supervisor within the meaning of Section 2(11) of the Act. Apple admits that Powers is an agent of Apple within the meaning of Section 2(13) of the Act for some, but not all, purposes. Apple denies each and every remaining allegation and legal conclusion contained in Paragraph 4 relating to Powers.

Apple admits that Ekelemchi Okpo is an Employee Relations Partner. Apple admits that Okpo is an agent of Apple within the meaning of Section 2(13) of the Act for some, but not all, purposes. Apple denies each and every remaining allegation and legal conclusion contained in Paragraph 4 relating to Okpo.

Apple denies each and every remaining allegation and legal conclusion contained in Paragraph 4.

5. About March 22, 2021, Respondent, by David Powers, by telephone:

(a) Directed employees to refrain from talking about workplace environmental health and safety concerns with other employees.

(b) Impliedly threatened employees with discipline by telling employees that the instruction to refrain from talking about workplace environmental health and safety concerns with other employees, was a warning.

Response:

Apple denies each and every allegation and legal conclusion contained in Paragraphs 5 and 5(a).

Apple denies each and every allegation and legal conclusion contained in Paragraphs 5 5(b).

Apple denies each and every remaining allegation and legal conclusion in Paragraphs 5, 5(a), and 5(b).

6. About April 27, 2021, Respondent, by Jenna Waibel:

(a) By telephone, told employees to use the following five-point balancing test in advance of communicating workplace health and safety concerns to other employees:

- make sure the information is complete
- make sure the information is accurate
- that it does not cause panic
- that it does not make an assessment about safety; and
- that people talk to the Employer's Environmental Health and Safety (EHS) department directly.

(b) By email, told employees that when discussing terms and conditions of employment, they should ensure that the information shared was as accurate and complete as possible.

(c) By email, told employees to refrain from discussing their terms and conditions of employment by telling employees to first communicate their workplace health and safety concerns directly with Respondent.

Response:

Apple denies each and every allegation and legal conclusion contained in Paragraphs 6 and 6(a).

Apple denies each and every allegation and legal conclusion contained in Paragraphs 6 and 6(b).

Apple denies each and every allegation and legal conclusion contained in Paragraphs 6 and 6(c).

Apple denies each and every remaining allegation and legal conclusion in Paragraphs 6, 6(a), 6(b), and 6(c).

7. Respondent, by Ekelemchi Okpo:

(a) About August 4, 2021, during a video meeting, directed employees not to talk to other employees about Respondent's investigation of employees' workplace health and safety concerns.

(b) About August 4, 2021, by email, told employees to refrain from sharing communications about Respondent's investigation into employees' workplace health and safety concerns.

(c) About August 5, 2021, by email, told employees that he was "disappointed" that they "misrepresented" their discussion on August 4, 2021.

Response:

Apple denies each and every allegation and legal conclusion contained in Paragraphs 7 and 7(a).

Apple denies each and every allegation and legal conclusion contained in Paragraphs 6 and 7(b).

In response to Paragraph 7(c), Apple admits that Okpo wrote to Gjovik that he was "disappointed about you misrepresenting our discussion." Apple denies each and every remaining allegation and legal conclusion contained in Paragraphs 7 and 7(c).

Apple denies each and every remaining allegation and legal conclusion in Paragraphs 7, 7(a), 7(b), and 7(c).

8. (a) From about March 22, 2021, to about September 2021, Respondent's employee Gjøvik concertedly complained to Respondent regarding the wages, hours, and working conditions of Respondent's employees, by inter alia, raising workplace environmental health and safety concerns.

(b) From about June 2021, to about September 2021, Respondent's employee Gjøvik engaged in concerted activities for the purposes of mutual aid and protection, by, inter alia, circulating a petition amongst employees regarding return-to-work concerns, talking to newspaper outlets about employees' workplace complaints and concerns, posting about workplace complaints and concerns on social media as well as on Respondent's Slack channel platform.

(c) About August 4, 2021, Respondent suspended its employee Gjøvik.

(d) About September 9, 2021, Respondent discharged its employee Gjøvik.

(e) Respondent engaged in the conduct described above in paragraphs 8(c) and 8(d), because Gjøvik engaged in the conduct described above in paragraphs 8(a) and 8(b), and to discourage employees from engaging in these or other concerted activities.

Response:

Paragraph 8(a) states a legal conclusion to which no response is required. To the extent a response is required, Apple denies each and every allegation and legal conclusion set forth in Paragraphs 8 and 8(a).

Paragraph 8(b) states a legal conclusion to which no response is required. To the extent a response is required, Apple denies each and every allegation and legal conclusion set forth in Paragraphs 8 and 8(b).

Apple denies each and every allegation and legal conclusion contained in Paragraphs 8 and 8(c).

In response to Paragraph 8(d), Apple admits that it discharged Gjovik from employment effective September 10, 2021. Apple denies each and every remaining allegation and legal conclusion contained in Paragraphs 8 and 8(d).

Paragraph 8(e) states a legal conclusion to which no response is required. To the extent a response is required, Apple denies each and every allegation and legal conclusion set forth in Paragraphs 8 and 8(e).

Apple denies each and every remaining allegation and legal conclusion in Paragraphs 8, 8(a), 8(b), 8(c), 8(d), and 8(e).

9. By the conduct described above in paragraphs 5 through 8 Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

Response:

Paragraph 9 states a legal conclusion to which no response is required. To the extent a response is required, Apple denies each and every allegation and legal conclusion set forth in Paragraph 9.

10. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

Response:

Paragraph 10 states a legal conclusion to which no response is required. To the extent a response is required, Apple denies each and every allegation and legal conclusion set forth in Paragraph 10.

Any and all remaining allegations contained in the Complaint are denied, along with each and every related legal conclusion.

AFFIRMATIVE AND OTHER DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.

2. Under Section 10(c) of the National Labor Relations Act, Gjovik was discharged for cause and no order of the Board may require her reinstatement or the payment to her of any backpay.

3. Gjovik failed to mitigate any alleged damages.

4. Under a *de novo* interpretation of the Act, required by *Loper Bright v. Raimondo*, 603 U.S. ___, 144 S. Ct. 2244 (2024), the alleged statements by supervisors or agents of Apple identified in the Complaint are lawful.

5. Under the Takings Clause in the Fifth Amendment of the United States Constitution, the relief sought in the Complaint, including but not limited to the deprivation of the Respondent's property rights in its own business communication systems, the surrender of those systems for Board agents to use for multiple government-conducted "training sessions", and compensation to an employee who is not entitled to such compensation, is a taking without just compensation.

6. The Complaint interferes with the Respondent's rights under Section 8(c) of the Act and the First Amendment to the United States Constitution generally by forbidding Respondent, and its supervisors and agents from stating their views when Respondent's policies are criticized and even disparaged by employees, from responding to false statements, and from establishing its own internal communications protocols.

7. Any finding of an unfair labor practice based in whole or in part on statements and/or publications disseminated by Apple or its agents in any meetings, one-on-one discussions, or written or other communications which "contains no threat of reprisal or force or promise of benefit" constitutes an unconstitutional infringement on the First Amendment rights of freedom of speech and the right of the people peaceably to assemble. Under the U.S. Supreme Court's decision in *Counterman v. Colorado*, 600 U.S. 66 (2023), the First Amendment requires that, for regulation of an alleged threat to be constitutionally permitted, it must be a "true threat" and the Government must demonstrate from the context of the statement that the author of the threat acted at least in reckless disregard of whether the subject might actually find it threatening. In this case, the NLRB has failed to plead any of the required elements required under *Counterman*, and even if it had, it could not prove them. The Board's attempts to regulate Apple's speech therefore exceeds the constitutional limits identified by the Supreme Court in *Counterman*.

8. The remedies sought are further punitive, inappropriate, and non-remedial to the extent that they seek the posting and/or circulation of notices to employees outside of the facility where the charge originated, the reading of notices, require the preparation and transmission of so-called apology letters, and to require Board agents to conduct required training of Apple personnel on Company time.

9. The Board's decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), and the Board's request for consequential damages in its prayer for relief, violates Apple's Seventh Amendment right to a trial by jury in an Article III court.

10. The Complaint is barred inasmuch as Gjovik failed to properly serve the charges on the Respondent as required by Section 102.14(a) of the Board's Rules and Regulations.

11. Some or all of the allegations of the Complaint are barred in whole or in part because such allegations were not within the scope of the allegations made in any underlying unfair labor practice charge(s).

12. Some or all of the allegations of the Complaint are barred in whole or in part by the applicable limitations period under Section 10(b) of the NLRA.

13. No remedy is appropriate as Apple has not engaged in any unfair labor practice. Further, the remedies requested in the Complaint are punitive, inappropriate, non-remedial, violate Apple's freedom of speech rights under the First Amendment (as noted above), violate the takings clause of the Fifth Amendment (as noted above), and are beyond the authority of the Board to order.

Apple further reserves the right to amend and/or supplement its answers and affirmative defenses.

Dated: Chicago, Illinois
January 2, 2025

Respectfully submitted,

/s/ Mark L. Stolzenburg

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CERTIFICATE OF SERVICE

I certify that on January 2, 2025, a copy of Apple Inc.'s Answer to Consolidated Complaint in NLRB Case Nos. 32-CA-282142 and 32-CA-283161 was filed electronically using the NLRB's e-filing system and served by email on the following:

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