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

APPLE INC. [1] **Case 32-CA-284428**

and

ASHLEY GJOVIK, an Individual

ANSWER TO CORRECTED 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 Corrected Complaint and Notice of Hearing ("Complaint") according to the Complaint's numbered paragraphs. To the extent the Complaint's introduction contains allegations and legal conclusions, they are denied.

1. The charge was filed by Gjovik on October 12, 2021, and a copy was served on Respondent by U.S. mail on October 13, 2021.

ANSWER: On information and belief, Apple admits the allegations of Paragraph 1.

2. (a) At all times reasonably encompassed by this complaint and any answer Respondent may file, i.e., all material times, Respondent, a California corporation with a headquarters at One Apple Park Way, Cupertino, CA and retail facilities throughout the U.S., has been engaged in the development, manufacture, and retail sale of consumer electronics and software.

[1] Apple's name is "Apple Inc." There is no comma preceding the "Inc." Apple moves to correct the case caption to correctly reflect its name.

(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.

(c) At all times reasonably encompassed by this complaint and any answer Respondent may file, i.e., all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

ANSWER:

(a) Apple admits the allegations of Paragraph 2(a).

(b) Apple admits the allegations of Paragraph 2(b).

(c) Apple admits the allegations of Paragraph 2(c).

3. Since at least April 13, 2021, in a **Frequently Asked Questions** page on its intranet, a copy of which is attached to this Complaint as Attachment A and is incorporated herein in its entirety, Respondent has defined confidential information as follows:

> Apple Confidential information is anything not explicitly, publicly, or purposefully disclosed by Apple. Examples of Apple Confidential information include unannounced products (including their release dates, pricing, and specifications), unannounced sales promotions, certain AppleWeb announcements, organizational charts, financial forecasts, and customer information.

ANSWER: Apple admits the allegations of Paragraph 3.

4. Since at least April 13, 2021, Respondent has maintained a "**Confidentiality and Intellectual Property Agreement**" (IPA), a copy of which is attached to this Complaint as Attachment B and is incorporated herein in its entirety.

(a) Under the section heading "**I. Confidential and Proprietary Information**," the IPA states, inter alia:

> You understand that your employment by Apple creates a relationship of confidence and trust with respect to any confidential, proprietary, or non-public information that may be disclosed to you or otherwise learned by you in the course of employment at Apple, including but not limited to any confidential information of third parties disclosed to Apple. As referred to herein, "Proprietary information" means all information not generally known outside Apple and/or kept confidential by Apple, including for example but not limited to (a) trade secrets, R&D records, reports, samples, manuals, plans, specifications, inventions, ideas, designs, prototypes, software, source code, or any other materials or information relating to past, existing, and future products and services whether or not developed, marketed, used, or rejected by Apple or persons or companies dealing with Apple; (b) sales, profits, organization, customer lists, pricing, sources of material, supply, costs, manufacturing, financials, forecasts, market research, or any other information relating to the business operations or affairs of Apple or persons or companies dealing with Apple; and (c) the employment and personnel information of Apple, such as compensation, training, recruiting, and other human resources information.

(b) There is a footnote at the end of the paragraph quoted above that states:

> Nothing in this Agreement should be interpreted as restricting your rights to speak freely about your wages, hours, or working conditions as legally permitted.

(c) Under the section heading "I. Confidential and Proprietary Information," the IPA further states:

> **A. Treatment of Proprietary Information**. You understand and agree that your employment by Apple prohibits you, during or after employment, from using or disclosing, or permitting any other person or entity to use or disclose, any Proprietary Information without the written consent of Apple, except as necessary to perform your duties as an employee of Apple. You understand and agree to strictly comply with all of Apple's rules and policies regarding Proprietary Information and use best efforts to safeguard such Proprietary Information and protect it against disclosure, misuse, loss, or theft. Upon termination of employment with Apple, you will promptly deliver to Apple all documents and materials of any kind pertaining to your work at Apple, and you agree that you will not take with you any documents, materials, or copies thereof, whether on paper or any other medium, containing any Proprietary Information.

ANSWER: Apple admits that it has maintained an IPA since at least April 13, 2021. With regard to the specific provisions of the IPA identified above in Paragraphs 4(a) through 4(c),

Apple answers as follows, with such answers limited to the version of the IPA executed by Charging Party:

(a) Apple admits that the version of the IPA executed by Charging Party contained the language set forth in Paragraph 4(a). Apple denies all the remaining allegations of Paragraph 4(a), and each and every related legal conclusion.

(b) Apple admits that the version of the IPA executed by Charging Party contained the footnote set forth in Paragraph 4(b). Apple denies all the remaining allegations of Paragraph 4(b), and each and every related legal conclusion.

(c) Apple admits that the version of the IPA executed by Charging Party contained the language set forth in Paragraph 4(c). Apple denies all the remaining allegations of Paragraph 4(c), and each and every related legal conclusion.

Apple denies all the remaining allegations of Paragraph 4 and each of its subparagraphs, and each and every related legal conclusion.

5. Since at least April 13, 2021, Respondent has maintained a **Business Conduct Policy** (BCP), and since at least April 13, 2021, Respondent has maintained as part of the BCP the rules and provisions set forth below. A copy of the 2020 version of the BCP is attached to this Complaint as Attachment C and is incorporated herein in its entirety.

(a) Under the section heading "**The Way We Do Business Worldwide**," the BCP states, inter alia:

> **Your Responsibilities and Obligation to Take Action**
>
> Everything we do is a reflection of Apple. We expect you to:
>
> - **Follow the Policy**. Comply with the letter and spirit of Apple's Business Conduct Policy and all applicable legal requirements.

- **Speak up**. If you see or hear of any violation of Apple's Business Conduct Policy, other Apple policies, or legal or regulatory requirements, you must notify either your manager, People Team, Legal, or Business Conduct.

- **Use good judgment and ask questions**. Apply Apple's principles of business conduct, and review our policies and legal requirements. When in doubt about how to proceed, discuss it with your manager, your People Business Partner, Legal, or Business Conduct. Any failure to comply with Apple's Business Conduct Policy—or failure to report a violation—may result in disciplinary action, up to and including termination of employment.

You are also required to fully cooperate in any Apple investigation, and keep any information shared with you confidential to safeguard the integrity of the investigation.

(b) Under the section heading "The Way We Do Business Worldwide," the 2020 BCP further states:

Your Rights as an Employee

While we expect employees to follow the Business Conduct Policy, nothing in this Policy should be interpreted as being restrictive of your right to speak freely about your wages, hours, or working conditions.

In the August 2022 BCP, this subsection was modified to read as follows:

Your Rights as an Employee

You are permitted to speak freely about your wages, hours, and working conditions, including information about harassment, discrimination, or any other conduct you have reason to believe is unlawful, and nothing in this Policy, or any Apple policy, should be interpreted as being restrictive of your right to do so.

(c) Under the section heading "**Protecting Apple**," the BCP states: Protecting Apple's Assets and Information

You play a key role in helping us protect Apple. Assets include Apple's proprietary information (such as intellectual property, confidential business plans, unannounced product plans, sales and marketing strategies, and other trade secrets), as well as physical assets such as cash, equipment, supplies and product inventory.

- **Watch what you say**. Being aware of where you are, who is around you, and what they might see or overhear is an important way we all protect Apple's secrets.

- **Protect our assets**. Keep track of the assets and information Apple has entrusted you, and prevent loss, misuse, waste, or theft.

- **Set an example**. Model behavior that protects our assets and information at all times.

(d) Under the section heading "**Protecting Apple**," the BCP further states:

Apple Confidential Information

One of our greatest assets is information about our products and services, including future product offerings. Never disclose confidential, operational, financial, trade-secret, or other business information without verifying with your manager whether such disclosure is appropriate. We are very selective when disclosing this type of information to vendors, suppliers, or other third parties, and only do so once a non-disclosure agreement is in place. Even with[in] Apple, confidential information should only be shared on a need-to-know basis. The Intellectual Property Agreement that you signed when you joined Apple outlines your duty to protect our information.

For more information, visit the Global Security website.

(e) Under the section heading "**Protecting Apple**," the BCP further states:

Non-Disclosure/Confidentiality Agreements

Never share confidential information about Apple's products or services without your manager's approval. When there is a business need to share confidential information with a supplier, vendor, or other third party, never volunteer more than what is necessary to address the business at hand. Any confidential information shared outside Apple should be covered by a non-disclosure/confidentiality agreement (NDA). Contact Legal in your region to obtain an NDA. In the United States, you can find NDA information and support on the Legal website.

(f) Under the section heading "**Protecting Apple**," the BCP further states:

Accuracy of Records and Reports

Accurate and honest records are critical to meeting our legal, financial, and management obligations. You should ensure that all records and reports, including timecards, customer information, technical and product

information, correspondence, and public communications are comprehensive, fair, accurate, timely, and understandable.

Do not misstate facts, omit critical information, or modify records or reports in any way to mislead others, and never assist others in doing so. Intentional manipulation of Apple records is a form of fraud.

(g) Under the section heading "**Protecting Apple**," the BCP further states:

Public Speaking and Press Inquiries

All public or outside speaking engagements that relate to Apple's business or products must be pre-approved by your manager and Corporate Communications. If your request is approved, you may not request or accept any form of personal compensation from the organization that requested your participation, but you may accept reimbursement for incurred expenses. All inquiries from the media, industry, or financial analyst community must be referred to Corporate Communications or Investor Relations.

(h) Under the section heading "**Protecting Apple**," the BCP further states:

Publishing Articles

If you want to contribute an article or other type of submission to a publication or blog on a topic that relates to Apple's business or products or could be seen as a conflict of interest, you must first request approval from Corporate Communications. If your contribution is technical or academic and [relates] to Apple, complete the Academic and Industry-Related Activities Questionnaire to obtain review from Legal and Business Conduct. If your contribution is determined to be a conflict of interest, you will need to get senior vice president approval. For additional information, see the Social Media and Online Communications guidelines.

(i) Under the section heading "**Individual Accountability**," the BCP states:

Avoiding Conflicts of Interest

A conflict of interest is any activity that may damage Apple's reputation or financial interests, or gives the appearance of impropriety or divided loyalty. Avoid any situation that creates a real or perceived conflict of interest. If you are unsure about a potential conflict, talk to your manager, Business Conduct, or your People Business Partner.

(j) Under the section heading "**Individual Accountability**," the BCP further states:

Conflicts of Interest and Outside Activities

You may participate in outside activities, including secondary employment, businesses, inventions, and serving on boards, only if they do not present a conflict of interest and you adhere to the rules set out below.

Apple generally considers an outside activity to be a conflict of interest if it:

[...]

- Would require you to disclose or use confidential Apple information.

[...]

- Arises from your role in Apple's business relationship with the organization.

(k) Under the sub-heading "**Conflicts of Interest and Outside Activities**," the BCP further states:

Work with your manager and Business Conduct to evaluate a potential conflict of interest. If an outside activity presents a conflict of interest, you must partner with a People Business Partner, and obtain written approval from your manager, Legal (if applicable), and the senior most person reporting to the CEO of both your and any relevant organizations. Contact Business Conduct to assist with Legal review.

(l) Under the sub-heading "**Conflicts of Interest and Outside Activities**," the BCP further states:

Any employee, full or part-time, who is participating in an outside activity, must comply with the following rules. **Do not**:

- Use any time at work or any Apple assets for your outside activity. This includes Apple's workspace, phones, computers, [I]nternet access, photocopiers, and any other Apple assets or services.

[...]

- Use confidential Apple information.

(m) Under the section heading "**Individual Accountability**," the BCP further states:

Outside Employment and Inventions

Before participating in creating inventions or businesses that are in the same area as your work for Apple, or that compete with or relate to Apple's present or reasonably anticipated business, products or services, you must have written permission from your manager and the senior vice president of your organization. Before taking any paid employment outside of Apple, you should notify your manager. Visit the Conflicts of Interest page for more information on what would be considered a conflict.

(n) Under the section heading "**Business Integrity**," the BCP states:

Private Employee Information

You should never share a coworker or prospective employee's personal information. This includes information regarding their employment history, personal contact information, compensation, health information, or performance and disciplinary matters. Any Legal or business need-to-know exceptions should be approved by your manager and Legal.

(o) Under the section heading "**Business Integrity**," the BCP further states:

As an Apple employee, you should understand that subject to local laws and regulations and in accordance with Apple's review process, we may do one of the following when you access Apple's network or systems, or use any device, regardless of ownership, to conduct Apple business:

- Access, search, monitor, and archive all data and messages sent, accessed, viewed, or stored (including those from iCloud, Messages, or other personal accounts).

- Conduct physical, video, or electronic surveillance, search your workspace (e.g. file cabinets, desk drawers, and offices, even if locked), review phone records, or search any non-Apple property (e.g. backpacks, handbags) while on company premises.

- Disclose to law enforcement, without prior notice, any information discovered during a search that may indicate unlawful behavior.

(p) Under the section heading "**Business Integrity**," the BCP further states:

While limited personal use of Apple equipment and systems is allowed, Apple may monitor equipment and systems. You should not have any expectation about the privacy of content or personal information on Apple systems or networks, including VPN. To learn more, read our Information Security Policies and guidance on Personal Information Privacy on the People site, which explain Apple's rights and your rights when conducting

Apple business or using Apple-provided equipment. For more information, contact the Privacy team.

ANSWER: Apple admits that it has maintained a Business Conduct Policy since at least April 13, 2021. With regard to the specific provisions of the Business Conduct Policy identified above in Paragraphs 5(a) through 5(p), Apple answers as follows, with such answers limited to the period of April 13, 2021 to present:

(a) Apple admits the allegations of Paragraph 5(a).

(b) Apple admits the allegations of Paragraph 5(b).

(c) Apple admits the allegations of Paragraph 5(c).

(d) Apple admits the allegations of Paragraph 5(d), with the bracketed correction to a typographical error made above in the allegation.

(e) Apple admits that the heading and first three sentences of the provision of the BCP set forth in Paragraph 5(e) have appeared in the Business Conduct Policy since at least April 13, 2021. Apple admits that the last two sentences of the provision set forth in Paragraph 5(e) appeared in the Business Conduct Policy until about February 2024. Apple denies all the remaining allegations of Paragraph 5(e), and each and every related legal conclusion.

(f) Apple admits the allegations of Paragraph 5(f). Answering further, Apple states that "expense reports" was added immediately before "timecards" in or about August 2022.

(g) Apple admits the allegations of Paragraph 5(g). Answering further, Apple states that "business or products" was revised to "business, products, or services" in or about February 2024.

(h) Apple admits the allegations of Paragraph 5(h), with the bracketed correction to a typographical error made above in the allegation (i.e., removal of boldface type).

(i) Apple admits the allegations of Paragraph 5(i).

(j) Apple admits the allegations of Paragraph 5(j).

(k) Apple admits the allegations of Paragraph 5(k).

(l) Apple admits the allegations of Paragraph 5(l), with the bracketed correction to a typographical error made above in the allegation.

(m) Apple admits that the heading and first two sentences of the provision set forth in Paragraph 5(m) have appeared in the Business Conduct Policy since at least April 13, 2021. Apple denies that the third sentence of the provision set forth in Paragraph 5(m) has appeared in the identified provision of the Business Conduct Policy at any time since April 13, 2021 and all of the remaining allegations of Paragraph 5(m), and each and every related legal conclusion.

(n) Apple admits the allegations of Paragraph 5(n).

(o) Apple admits the allegations of Paragraph 5(o).

(p) Apple admits the allegations of Paragraph 5(p).

Apple denies all the remaining allegations of Paragraph 5 and each of its subparagraphs, and each and every related legal conclusion.

6. Since at least April 13, 2021, Respondent has maintained an "**About Workplace Policies**" (AWP) page on its intranet, a copy of which is attached to this Complaint as Attachment D and is incorporated herein in its entirety.

(a) Under the section heading "**Important points to know**," the AWP states, inter alia:

> - If you have knowledge of a possible violation of Apple's Business Conduct Policy (PDF), any other Apple policy, or legal or regulatory requirements, you must notify your manager, your People Business Partner, People Support, or the Business Conduct Helpline.

ANSWER: Apple admits the allegations of Paragraphs 6 and 6(a).

7. Since at least April 13, 2021, Respondent has maintained a **Workplace Searches and Privacy Policy** (WSPP), a copy of which is attached to this Complaint as Attachment E and is incorporated herein in its entirety.

(a) The first paragraph of the WSPP states:

> In order to protect Apple confidential and sensitive information and maintain the security and integrity of our networks and equipment, any use of Apple property, as well as use of your personal devices for Apple business or for accessing Apple networks, is subject to this policy.

(b) Under the section heading "**Use of Apple systems and data**," the WSPP states:

> All Apple facilities, furnishings, supplies, equipment, networks, and electronic systems (such as internet and intranet access, voicemail, email, instant messaging, and collaboration tools) are company property and are provided to conduct Apple business. Personal use is permitted as long as such use is reasonable and doesn't interfere with normal business activities. It must also not affect your performance, violate Apple policies and practices, or applicable local laws.
>
> Generally, you should use Apple equipment to conduct Apple business. If you use your personal property to conduct Apple business (such as computers, data storage devices, mobile devices, and so on), or to access Apple networks, you must act in accordance with Apple policies. In addition, your property may be subject to search and the Apple-related content may be removed.

(c) Under the section heading "**Workplace searches**," the WSPP states:

> Only in cases where allowed under local law, Apple may:
>
> - Access, search, monitor, archive, and delete Apple data stored on all of its property, as well as non-Apple property, if used for Apple business or if used for accessing Apple data, servers, or networks. This includes all data and messages sent, accessed, viewed, or stored (including those from iCloud, Messages, or other personal accounts) using Apple equipment, networks, or systems.
>
> - Conduct physical, video, or electronic surveillance, search your workspace such as file cabinets, desks, and offices (even if locked), review phone records, or search any non-Apple property (such as backpacks, purses) on company premises.

> This means that you have no expectation of privacy when using your or someone else's personal devices for Apple business, when using Apple systems or networks, or when on Apple premises.
>
> The search or removal of Apple-related content on a device will be determined on a case-by-case basis when there is a business need and subject to local approval processes. Refusing to permit a search or removal of Apple-related content may result in disciplinary action up to and including termination of employment.

ANSWER: Apple admits that it has maintained a WSPP since at least April 13, 2021. With regard to the specific provisions of the WSPP identified above in Paragraphs 7(a) through 7(c), Apple answers as follows, with such answers limited to the period of April 13, 2021 to present:

(a) Apple admits that the language set forth above in Paragraph 7(a) appeared in the WSPP until approximately February 28, 2022. Apple denies all the remaining allegations of Paragraphs 7 and 7(a), and each and every related legal conclusion.

(b) Apple admits that the language set forth above in Paragraph 7(b) appeared in the WSPP until approximately February 28, 2022. Apple denies all the remaining allegations of Paragraphs 7 and 7(b), and each and every related legal conclusion.

(c) Apple admits that the language set forth above in Paragraph 7(c) appeared in the WSPP until approximately February 28, 2022. Apple denies all the remaining allegations of Paragraphs 7 and 7(c), and each and every related legal conclusion.

Apple denies all the remaining allegations of Paragraph 7 and each of its subparagraphs, and each and every related legal conclusion.

8. Since at least April 13, 2021, Respondent has maintained a "**Misconduct and Discipline Policy**" (MDP), a copy of which is attached to this Complaint as Attachment F and is incorporated herein in its entirety.

(a) Under the section heading "**Conduct warranting immediate termination**," the MDP states, inter alia:

> Conduct that may warrant immediate termination of employment includes, but isn't limited to:
>
> **Policy violations**
>
> - Violating confidential, proprietary, and trade secret information obligations (including those stated in Apple's Intellectual Property Agreement).
>
> - Using Apple time, materials, facilities, equipment, or electronic resources for purposes unrelated to Apple business without your manager's express permission

(b) Under the section heading "**Conduct warranting immediate termination**," the MDP further states:

> **Other violations**
>
> - Video or audio recording others without their prior consent. Apple may use recording or surveillance equipment for safety or security reasons.
>
> - Photography at any Apple facility or home office or during meetings at any location where Apple confidential information could be compromised.

ANSWER:

(a) Apple admits the allegations of Paragraph 8 and 8(a).

(b) Apple admits the allegations of Paragraph 8 and 8(b).

9. Since at least April 13, 2021, Respondent has maintained a "**Social Media and Online Communications Policy**" (SMOCP), a copy of which is attached to this Complaint as Attachment G and is incorporated herein in its entirety.

(a) The SMOCP states, inter alia:

> Most of us rely on online resources such as email, social media, blogs, and wikis to stay connected.

It's your decision whether or not to engage in these or other online communications. But keep in mind that Apple's policies and guidelines apply to any activities that affect your performance, the performance of other Apple employees, or Apple's business interests.

This is true even if you blog, tweet, write, post, comment, share visual or other media, or otherwise communicate online outside of work — even if you do not identify yourself as an Apple employee. So before you click or tap "send," keep these guidelines in mind:

- **Protect Apple's confidential information**. As we conduct business around the world, our competitive strategy requires us to keep Apple's intellectual property and proprietary information confidential. This includes non-public information such as the timing, pricing, and design of Apple products; Apple's overall business performance; and the layout of our stores (including back-of-house areas, which contain competitive business operations information, customer data, sales targets, and other proprietary information).

  All Apple employees have an obligation to protect this information. Doing so respects the significant amount of time and energy Apple puts into introducing our customers to new products and new retail stores. For more information on confidentiality, see the Intellectual Property Agreement you signed when you were hired. You can also learn more about protecting Apple's assets and confidential information in Apple's Business Conduct Policy.

  [...]

  Nothing in these guidelines should be interpreted as restricting your right to speak freely about your wages, hours, or working conditions.

ANSWER: Apple admits the allegations of Paragraphs 9 and 9(a).

10. Since at least April 13, 2021, Respondent has maintained a "**Confidentiality Obligations Upon Termination of Employment Policy**" (COTEP), a copy of which is attached to this Complaint as Attachment H and is incorporated herein in its entirety.

(a) The COTEP states, inter alia:

During your employment, you had access to proprietary information of Apple Inc. and its subsidiaries (Apple). Examples of such proprietary information means all information not generally known outside Apple and/or kept confidential by Apple including for example and without limitation (a) trade secrets, R&D records, reports, samples, manuals plans,

> specifications, inventions, ideas, designs, prototypes, software, source code, or any other materials or information relating to past, existing, and future products and services whether or not developed, marketed, used, or rejected by Apple or persons or companies dealing with Apple; (b) sales, profits, organization, customer lists, pricing, sources of material, supply, costs, manufacturing, financials, forecasts, budgets, market research, marketing or advertising plans, or any other information relating to business operations or affairs of Apple or persons or companies dealing with Apple; (c) the employment and personnel information of Apple, such as compensation, training, recruiting, and other human resource information. You may have created such information in the course of your everyday work. You may have additionally had access to proprietary information in the course of your work at Apple obtained by third parties including subsidiaries, affiliates, vendors, suppliers, customers, consultants, licensees, and dealers. You are obligated not to disclose any above described proprietary information to any other person or company (other than with Apple's prior consent) or use it for your own benefit. Furthermore you are obligated to have returned to Apple all documents and materials of any kind pertaining to your work at Apple and containing any proprietary information.
>
> Certainly Apple has no desire to prevent you from the lawful exercise of your professional skills. However, any unauthorized disclosure or use of Apple proprietary information in conjunction with your new employment—or otherwise—would be a breach of your agreement with Apply, as well as a violation of the laws relating to the protection of such information. Your obligations continue until such time as the proprietary information is generally available to the public.
>
> [...]
>
> If you have any questions regarding the Confidentiality and Intellectual Property Agreement, if you are concerned about the use or disclosure of proprietary information, or if you should find yourself in a position where you are uncertain about whether an idea or invention should have been disclosed to Apple, please promptly contact the *Apple IP Transactions Department* at [redacted] and we will be pleased to review the matter with you.

ANSWER: Apple admits that it has maintained a COTEP since at least April 13, 2021. With regard to the specific provisions of the COTEP identified above in Paragraph 10(a), Apple answers as follows, with such answers limited to the period of April 13, 2021 to present:

Apple admits the allegations of Paragraphs 10 and 10(a) relating to the second and third paragraphs of the COTEP set forth in Paragraph 10(a).

Apple admits that the first paragraph set forth in Paragraph 10(a) appeared in the COTEP until a date uncertain. Apple denies that the first paragraph of the COTEP as reproduced above in Paragraph 10(a) remains in the COTEP as set forth above.

Apple denies all the remaining allegations of Paragraphs 10 and 10(a), and each and every related legal conclusion.

11. Since at least April 13, 2021, Respondent has maintained a "Checklist for Employees Leaving Apple" (Checklist), a copy of which is attached to this Complaint as Attachment I and is incorporated herein in its entirety.

(a) The Checklist states, inter alia:

> Confidentiality: As a reminder, you are expected to continue to abide by the provisions of the Intellectual Property Agreement after your employment with Apple ends. Examples include but are not limited to unreleased product information, new product schedules, budgets, marketing plans, organization charts, customer lists, and vendor contacts.

ANSWER: Apple admits that it has maintained the Checklist since at least April 13, 2021. With regard to the specific provision of the Checklist identified above in Paragraph 11(a), Apple answers as follows, with such answers limited to the period of April 13, 2021 to present:

Apple admits that the language set forth in Paragraph 11(a) has appeared in the Checklist since at least April 13, 2021 in mostly the same form as set forth above, with certain contractions added and punctuation changes made at some point after April 13, 2021.

Apple denies all the remaining allegations of Paragraphs 11 and 11(a), and each and every related legal conclusion.

12. By the conduct described above in paragraphs 3, 4(a), 4(c), 5(a), 5(c) – 5(p), and 6–11, 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.

ANSWER: Paragraph 12 states a legal conclusion to which no answer is required. To the extent a response is required, Apple denies each and every allegation of Paragraph 12.

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

ANSWER: Paragraph 13 states a legal conclusion to which no answer is required. To the extent a response is required, Apple denies each and every allegation of Paragraph 13.

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 a *de novo* interpretation of the Act, required by *Loper Bright v. Raimondo* 603 U.S. ___, 144 S. Ct. 2244 (2024), the policy provisions identified in the Complaint are lawful.

3. Under a *de novo* interpretation of the Act, required by *Loper Bright v. Raimondo* 603 U.S. ___, 144 S. Ct. 2244 (2024), the policy disclaimers identified in the Complaint, and other similar disclaimers to employees, render the policies identified in the Complaint lawful.

4. The Complaint allegations fail to identify any policy provisions that are unlawful under *Stericycle, Inc.*, 372 NLRB No. 113 (2023), which among other things requires "a particularized analysis of specific rules [and] their language."

5. The NLRB incorrectly decided *Stericycle, Inc.*, 372 N.L.R.B. No. 113 (Aug. 2, 2023). The standard adopted by the Board in *Stericycle* is overbroad and *ultra vires* because it functions as a presumption that policies that do not expressly address Section 7 rights

automatically violate the NLRA based on speculative future interference, absent sufficient justification and/or tailoring.

6. The policy provisions at issue in the Complaint are based on legitimate justifications and are properly worded under *Stericycle, Inc.*, 372 NLRB No. 113 (2023), even if that case is valid.

7. Any finding of an unfair labor practice based in whole or in part on speech and/or views, argument, or opinion spoken or disseminated by Apple or managers, supervisors, agents and other persons acting on behalf of Apple (collectively hereinafter referred to as "Apple's agents" or "its agents") in any policies, rules, other publications, meetings, one-on-one discussions, or written or other communications, whether in written, electronic, printed, graphic, or visual form which "contains no threat of reprisal or force or promise of benefit" is prohibited by NLRA Section 8(c).

8. Any finding of an unfair labor practice based in whole or in part on 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*.

9. 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, violate the takings clause of the Fifth Amendment, and are beyond the authority of the Board to order.

10. 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.

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

WHEREFORE, Apple respectfully requests that the Complaint be dismissed in its entirety, with prejudice.

Dated: Chicago, Illinois
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Respectfully submitted,

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