

1 **Ashley M. Gjovik, JD**  
2 *Pro Se Complainant*  
3 Boston, Massachusetts  
4 [legal@ashleygjovik.com](mailto:legal@ashleygjovik.com)

5 **U.S. DEPARTMENT OF LABOR**  
6 **OFFICE OF ADMINISTRATIVE LAW JUDGES**

9 **OALJ Case No. 2024-CER-00001**

10 **ALJ: Judge Jerry DeMaio**

11  
12 **ASHLEY GJOVIK, an individual,**  
13 Complainant Employee,  
14  
15 v.  
16 **APPLE INC, a corporation,**  
17 Respondent Employer.

11 **PROPOSED AMENDED COMPLAINT**

12 **VIOLATIONS OF:**

13 **The Environmental Statutes,**

14 **(29 C.F.R. Part 24)**

- 15 – **The CERCLA, 42 U.S.C. § 9610**
- 16 – **The Clean Air Act, 42 U.S.C. § 7622**
- 17 – **The RCRA, 42 U.S.C. § 6971**
- 18 – **The TSCA, 15 U.S.C. § 2622**

**I. SUMMARY**

1  
2 1. Employee Ashley Gjovik (“Complainant”) alleges that Employer Apple Inc  
3 (“Respondent”) violated the Employee Protection provisions of multiple federal environmental  
4 statutes (CERCLA, CAA, RCRA, TSCA) when Apple took adverse actions against Gjovik in  
5 retaliation for Gjovik’s protected acts which were in furtherance of the purposes of these  
6 environmental statutes.<sup>1</sup> Gjovik’s protected environmental acts included emails of questions and  
7 concerns to management at Apple and to the government, phone calls with the government about  
8 her concerns, statements made to the press, writing an article and having it published in a  
9 newspaper, the submission of public records requests, gathering photographs of site conditions,  
10 conducting air and soil tests and planning to conduct more tests, filing formal complaints to the  
11 government, meetings with elected officials, and participation in governmental inquiries and  
12 investigations.  
13  
14

15 2. Gjovik’s activities resulted in government ordered corrective actions, including  
16 agency orders for Apple to resolve concrete issues with CERCLA engineering controls which were  
17 impacting both indoor and outdoor air at Gjovik’s office; oversight of Apple’s CERCLA vapor  
18 intrusion testing at Gjovik’s office; creation of formal operations and maintenance plans for  
19 CERCLA oversight of Gjovik's office; announced and unannounced onsite inspections under  
20 CERCLA and RCRA at Gjovik’s office and where Apple severely injured Gjovik in 2020; and US  
21 EPA reports of inspection findings for both sites.. Further, members of the public were made aware  
22 of RCRA and Clean Air Act related chemical exposure (including TSCA regulated chemicals) that  
23 explained otherwise unexplained illness impacting them and/or their families. None of these things  
24  
25

26 \_\_\_\_\_  
27 <sup>1</sup> CLEAN AIR ACT (CAA) – 42 U.S.C. § 7622; COMPREHENSIVE ENVIRONMENTAL RESPONSE,  
28 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; TOXIC  
SUBSTANCES CONTROL ACT (TSCA) – 15 U.S.C. § 7622; 29 CFR Part 24.

1 would have occurred without Gjovik’s protected environmental action, and this is why Apple  
2 retaliated against her.

3 3. The adverse actions Apple took against Gjovik, in retaliation for Gjovik’s protected  
4 environmental activities, and with forbidden animus, caused Gjovik severe harm. These  
5 environmental statutes were enacted to protect workers like Gjovik, who can in turn protect the  
6 environment and the public. Thus, because Apple intentionally violated these statutes and  
7 frustrated the purpose of the Acts – justice demands a remedy and Gjovik should be made whole.  
8 In addition, Apple should be punished for its malice and flagrant disregard of Gjovik’s rights.  
9

10 **II. PARTIES & JURISDICTION**

11 4. Ashley Gjovik (“Complainant”) was a full-time employee at Apple Inc  
12 (“Respondent”), with her offices located in California. Gjovik worked at Apple starting in  
13 February 23 2015 and through September 10 2021. Apple is a private U.S. corporation subject to  
14 the jurisdiction of 42 U.S. Code §§ 9610(a), 6971, 7622; 15 U.S. Code § 2622; 29 C.F.R. Part 24.  
15

16 5. This Court has jurisdiction over this matter under the environmental statutes, and  
17 the Code of Federal Regulations 29 C.F.R. Part 24. Gjovik filed proper complaints with the U.S.  
18 Department of Labor and within thirty days of adverse actions, and the remainder of acts meet the  
19 statute of limitations through the theories of continuing violations and an intertwined hostile work  
20 environment. The environmental statutes call for formal adjudication under the APA, 29 C.F.R.  
21 Part 18, and 29 CFR § 24.107 – providing employee an “*opportunity to be heard at a meaningful*  
22 *time and in a meaningful manner.*”  
23  
24

25 **III. PROCEDURAL HISTORY**

26 6. Gjovik filed complaints with U.S. Department of Labor Department of  
27 Whistleblower Protection Programs on August 29 2021 (prior to her termination) and November  
28

1 2 2021 (after her termination). Gjovik's intake interview occurred in November 2021 and her claim  
2 was dismissed in December 2023. Gjovik's August 29 2021 complaint alleged she was retaliated  
3 against for complaining to Apple management about unlawful conditions, conduct, and/or  
4 practices; for reporting issues and sharing information with the US EPA; reporting injuries,  
5 illnesses, and accidents; that she participated in health and safety activities; refused to perform  
6 tasks that are unsafe and/or illegal, engaged in concerted protected activity, and was discriminated  
7 against based on her protected characteristics.  
8

9 7. On August 31 2021, the US Dept. of Labor gave Gjovik ten days to respond to their  
10 follow up questions or else her complaint would be dismissed. The agency records also show they  
11 tried to dismiss Gjovik's complaint on August 31 prior to even contacting her, and on September  
12 9 2021 prior to her responding, then again on September 10 2021. At that point it was only coded  
13 as an OSH Act claim, and Gjovik protested and demanded the case be reopened.  
14

15 8. On November 1 2021, Gjovik asked US Department of Labor to add TSCA,  
16 CERCLA, CWA, and CAA claims to her case – among other statutes. Gjovik filed a second  
17 complaint on November 2 2021 noting it was to ensure her termination was captured for the case  
18 (ECN78416). The case was finally docketed on December 10 2021, but only under OSH Act,  
19 CERCLA, and SOX. On December 12 2021, Gjovik protested OSHA's summary in the December  
20 10 did not include her main allegations, including reporting requirements for the cracked slab.  
21

22 9. In January 2022, Gjovik drafted memos on the three claims and included facts from  
23 September 2020 about 3250 Scott Blvd, noting the incident at her apartment may have been  
24 relevant to the 825 Stewart Drive CERLCA claim against Apple. Apple provided a position  
25 statement on March 3 2022, which was provide to Gjovik on March 9 2022. Gjovik submitted  
26 rebuttal statement on March 28 2022. It was not until June 2022 that Gjovik learned about the  
27  
28

1 August 19 2021 US EPA inspection at her office; at which point she notified US Dept. of Labor  
2 and shared the report (however, FOIA documents would later reveal that OSHA already knew  
3 about the inspection since December 2021 and never told Gjovik about it).

4  
5 10. In February-March 2023, Gjovik notified US Dept. of Labor about her discovery  
6 of Apple’s activities at 3250 Scott Blvd and complained of “*highly unlawfully zoned*  
7 *semiconductor manufacturing,*” “*dumping,*” and other “*monstrosities we haven’t seen in the valley*  
8 *since the 1980s.*”

9 11. U.S. Dept. Of Labor tried to dismiss the case again on in January 2023, and finally  
10 did so in December 2023. The U.S. Department of Labor Department of Whistleblower Protection  
11 Programs failed to conduct a fair or thorough investigation, and issued a determination that is  
12 arbitrary, capricious, and contrary to the law and facts. Gjovik requested a de novo trial with U.S.  
13 Department of Labor OALJ and prays the prior OSHA determination can be disregarded entirely.  
14

15 **IV. PENDENCY OF OTHER ACTIONS**

16 12. Gjovik also has four pending NLRB charges, and two pending NLRB cases with  
17 Gjovik as the Charging Party and Apple as the Charged Party. The four pending charges allege  
18 unlawful retaliation for protected concerted activity and commission of unfair labor practices. In  
19 2023, the NLRB issued a decision of merit on Gjovik’s claims that Apple’s U.S. work policies  
20 violate federal law.  
21

22 13. Gjovik had a California Department of Labor DIR Retaliation case.<sup>2</sup> However, she  
23 removed those claims to her civil lawsuit. The state labor claims include Cal. Labor Code § 1102.5,  
24 (the California Whistleblower Protection Act), covering Gjovik’s environmental and safety  
25 disclosures, and Cal. Labor Code § 6310, covering Gjovik’s safety complaints. The § 6310 claim  
26  
27

28 <sup>2</sup> *Ashley Gjovik v Apple Inc*, Case no. RCI-CM-842830, California Department of Labor DIR Retaliation.

1 includes allegations related to HazCom rules, Right to Know, MSDS, injury reporting, and vapor  
2 intrusion in the indoor air of her office at 825 Stewart Drive. Those claims were kicked out to a  
3 U.S. Court and are now part of Gjovik’s civil lawsuit and will be adjudicated separately.

4  
5 14. Gjovik’s civil lawsuit was filed September 7 2023, just two days prior to the  
6 expiration of statute of limitations for several claims. The case is *Ashley Gjovik v Apple Inc* and is  
7 in the U.S. District Court of Northern California’s San Francisco Division courts.<sup>3</sup> In addition to  
8 the labor (Cal. Labor § 98.6), safety (§ 6310), and whistleblower (§ 1102.5; and Termination in  
9 Violation of Public Policy) claims – the case also includes two toxic torts (private nuisance and  
10 ultrahazardous activities) arising from semiconductor fabrication activities at 3250 Scott Blvd, as  
11 well as claims for Intentional Infliction of Emotional Distress, breach of the implied covenant of  
12 Good Faith and Fair Dealing, and violation of Cal. Business and Professions Code §§ 17200 *et*  
13 *seq.* (California’s Unfair Competition Law). Apple’s proffered supposed legitimate justification  
14 for terminating Gjovik’s employment is the subject of the Unfair Competition Law and  
15 Termination in Violation of Public Policy claims, as that justification was unlawful itself.  
16

17  
18 15. The above civil claims survived a Motion to Dismiss, but Gjovik was also approved  
19 to amend six additional claims at her discretion: the RICO ACT 1962(c) and 1962(d), the BANE  
20 ACT, the RALPH ACT, Breach of Implied Contract, and NIED. (the Amended Complaint is due in  
21 two weeks).

22  
23 16. Based on average schedules, it’s likely the OALJ hearing will finish before Gjovik  
24 has a hearing on any other charge. If Gjovik prevails in the OALJ hearing, she plans to claim  
25 *collateral estoppel* in the civil case on related determinations that were fully litigated and the  
26 burden of proof is equivalent or less.

27  
28 <sup>3</sup> *Ashley Gjovik v Apple Inc*, Case no. 3:23-cv-04597-EMC, US District Court, Northern District of  
California, San Fransisco Division (2023-).

**V. STATEMENT OF FACTS**

1  
2 17. Gjovik started her employment at Apple Inc in February 2015 as an Engineering  
3 Project Manager in the Software Engineering organization and worked at Apple’s main Infinite  
4 Loop campus (a Brownfield site) in Cupertino, California. In 2017, Gjovik d took a new role as an  
5 Engineering Program Manager in Hardware Engineering, and she moved into a different office in  
6 Sunnyvale, California at 825 Stewart Drive (the “TRW Microwave” NPL Superfund site and  
7 “Triple Site” triple NPL Superfund sites). Gjovik was promoted to a Senior Engineering Program  
8 Manager in 2018 and continued to work at 825 Stewart Drive as her primary office until the time  
9 she was terminated on September 9 2021. During Gjovik’s work at Apple, she also spent  
10 substantial time at Apple Park (a Brownfield site and the “Intersil/Siemens” NPL Superfund site  
11 groundwater plume), at “Tantau 8” next to Apple Park (the “Intersil/Siemens” double NPL  
12 Superfund site).

13  
14  
15 18. Gjovik’s role at Apple for those six years and seven months involved managing  
16 complex, high-risk projects, programs, process initiatives, customer product launches, and  
17 operating system software deployments. Gjovik’s positions included engaged, technical and  
18 program leadership of software failure analysis, system-level quality assurance (software,  
19 firmware, and hardware), and operation system builds and production deployment – among other  
20 functions and roles. Starting in around 2018, Gjovik also took on a chief of staff function for her  
21 two managers, a Director (D.P.) and a Senior Director (D.W.)

22  
23 19. While still working full-time, Gjovik began a four-year, evening law school  
24 program at Santa Clara University School of Law in August 2018. In addition, from May 2019 to  
25 August 2019, Gjovik was approved to work in a part-time, informal rotation role withing Apple’s  
26 Legal department, working on legal matters for Apple’s software teams. Gjovik’s primary  
27 assignment was leading a company-wide initiative to develop Apple’s first artificial intelligence  
28

1 ethics policy.

2 20. In February 2020, Gjovik moved into a new apartment in Santa Clara at 3255 Scott  
3 Blvd, and quickly feel severely ill. Gjovik found herself at the emergency room and urgent care,  
4 seeing numerous specialists, and being subjected to invasive and uncomfortable testing and  
5 monitoring. At first the only tangible medical symptoms was a dramatic decrease in her heart rate  
6 (bradycardia), an arrhythmia, and volatile blood pressure readings, but as time progressed her body  
7 also became covered in rashes, hives, and burns – lesions and tumors grew on her skin and inside  
8 her body. Her most disabling symptom was severe, debilitating dizzy spells and pre-syncope –  
9 however she also suffered from chest pain, palpitations, difficulty breathing, muscle spasms,  
10 numbness, confusion, changes in the appearance and structure of her hair (leading to it falling out),  
11 and other various horrible issues. She also believed she was having hallucinations at night but after  
12 learning about the specific chemicals she was exposed to, its clear those hallucinations were  
13 actually seizures.

16 21. Gjovik realized she was being exposed to industrial chemicals on September 2 2020  
17 and quickly went to work investigating, testing, gathering evidence, escalating, asking for help,  
18 and filing complaints. She filed complaints with US EPA, CalEPA, the County DEH, and city Fire  
19 Department/Hazmat. In a September 10 2020 email to US EPA she described: “*huge waves of*  
20 *tVOCs fuming up [her] apartment at the times [she] was hallucinating,” “huge spikes at 3am when*  
21 *[she] felt like [she] was choking/dying,”* and “*tVOC spikes usually at same time, often at least*  
22 *twice a day fumes seem to come in worst around 7am-8am, and 10pm-11pm.”* She noted that there  
23 were different chemical smells that occurred at different times and were associated with different  
24 clusters of symptoms.

27 22. Around September 8-10 2020, Gjovik contacted the Apple Safety team (part of  
28

1 Real Estate and EH&S) to ask about the area, after she discovered Apple had an office next door  
2 at 3250 Scott Blvd. A woman on the team (E.S.) had several phone calls with Gjovik about the  
3 site and building, and suggested Gjovik use “Extreme Condition Leave” to move out of the area.  
4 Gjovik did move out and her symptoms went away after we left.

5  
6 23. Gjovik filed a complaint to the California Air Resource Board and they came out  
7 for an inspection but could not find the source. In September 2020, Gjovik hired an industrial  
8 hygienist to test the air inside her apartment for volatile organic compounds. The results revealed  
9 the presence of industrial chemicals however there were incomplete results and Gjovik learned the  
10 testing method used (TO17 but only a two-hour sorbent tube) was inferior to the standard testing  
11 protocols with a 24-48 hours Summa canister. Gjovik’s results showed 1,000 mg/m<sup>3</sup> of tVOCs in  
12 the TO17 but her tVOC monitors showed 0.5 mg/m<sup>3</sup> and 1.7 mg/m<sup>3</sup>, and only half of the TO17  
13 results accounted for named chemicals with the rest unaccounted for, pointing towards there begin  
14 additional chemicals in the air that are not tested as part of the TO17. Gjovik spoke about this with  
15 the California Department of Environmental Health and it later informed Gjovik’s opinion that  
16 Apple needed to test her office with Summa canisters instead of sorbent tubes, and the US EPA  
17 later confirmed the same and even explained that Apple’s sorbent tubes would not have tested for  
18 some of the known pollution at the site.  
19  
20

21 24. Gjovik’s TO17 results did show a number of industrial chemicals Apple was  
22 storing, using, treating, and emitting at 3250 Scott Blvd including: Acetone, Acetonitrile, Benzene,  
23 Chloroform, 1,2-Dichloroethane, Ethylbenzene, Ethanol, Hexavalent chromium, Methylene  
24 Chloride, Toluene, and Xylene.  
25

26 25. In February 2021, Apple EH&S announced a project do conduct vapor intrusion  
27 surveys at all Apple Santa Clara Valley buildings, a visual inspection of first floor  
28

1 foundations/slabs, including penetrations and conduits, and conducting air monitoring. The survey  
2 was to include documenting cracks, cuts, and gaps greater than 1/8 of inch and the use of a  
3 photoionization detector to detect volatile organic compounds.

4           26.     On March 17 2021, Gjovik and her manager’s management team were notified of  
5 this survey and testing via an email from EH&S. Gjovik responded to the email urging the  
6 managers to take the matter seriously and disclosing to them the reason she was sick and on leave  
7 for so long in 2020 was exposure to hazardous waste vapors. Gjovik shared a link to the SF Bay  
8 View article she wrote about the air around 3250 Scott Blvd. Gjovik also included links to the US  
9 EPA website for 825 Stewart Drive and links to news articles (The Atlantic, KQED) about the  
10 pollution at 825 Stewart Drive. Gjovik asked if the testing was occurring due to an incident –  
11 explaining she found a 2016 US EPA report about vapor intrusion occurring at homes next-door  
12 and also a 2019 US EPA settlement involving the office and agreeing to further remediation. She  
13 linked to both records.

14           27.     Gjovik inquired as to the details of the air testing plan and what protocols they  
15 planned to use. Gjovik also asked if they would test the drinking water, noting the shallow  
16 groundwater under the building is contaminated. She also asked if Apple will share the test results  
17 and complained that employees should be better informed about “these types of environmental and  
18 health risks at our offices.” Gjovik also complained that the chemicals under their office can cause  
19 cancer, disruption of nervous and endocrine systems, and birth defects and miscarriages and linked  
20 to an article about it. Gjovik also asked if Right to Know should require Apple to tell them about  
21 the TCE exposure. Gjovik said employees should know they work on toxic waste dumps so they  
22 can report potential issues (like unusual chemical smells or physical symptoms) requiring quick  
23 investigation by the US EPA.

1           28.     Gjovik asked if she may be allowed to meet with EH&S to discuss this testing and  
2 the conditions at 825 Stewart Drive. The building manager raised Gjovik’s request to the main  
3 EH&S manager (A.B.) for the site, who then raised the request to the EH&S managers focused on  
4 hazardous waste dump sites (M.S. and A.J.). The OSHA EH&S (A.B.) manager forwarded  
5 Gjovik’s email described above. The toxic dump managers asked the OSHA EH&S manager who  
6 he told about the testing and what exactly he shared, also including the HazMat EH&S manager  
7 at 3250 Scott Blvd. (T.H.)  
8

9           29.     On March 17 2021, quickly after Gjovik sent her reply, her manager (D.P.) emailed  
10 her other manager (D.W.) and wrote *“I think Ashley should be keeping these emails private and  
11 not needlessly scaring the team about something she doesn’t know about. I want to have a talk  
12 with her.”* The same day, the Apple Human Resources Manager assigned to Gjovik’s organization  
13 (H.P.) escalated Gjovik’s email to Apple Employee Relations (J.W.) noting: *“Ashley has stepped  
14 in emailing all managers in Dave’s group about the review and her concerns about chemical  
15 contamination. She also asked to meet with EH&S. ... We’re both concerned about creating  
16 unnecessary concern while EH&S does their review. We’d love your input on how Dave can  
17 support Ashley’s inquiry but help her understand its not her role to be leading this with EH&S.”*  
18  
19

20           30.     On March 25 2021, Gjovik emailed her manager (D.P.) a summary of her research  
21 findings including prior vapor intrusion testing results that exceeded limits, the increasing amount  
22 of pollution in the groundwater under the building, and explained the land use covenant requires  
23 that US EPA be notified of any damage to the vapor intrusion mitigation system.  
24

25           31.     Gjovik met with Apple EH&S (M.S.) on April 2 2021, and Apple Employee  
26 Relations was also there (J.W.). On April 3, Gjovik emailed Employee Relations (J.W.) requesting  
27 that she provide Gjovik a written statement that Apple employees are allowed to speak out about  
28

1 concerns related to workplace conditions and there would be no retaliation for speaking out,  
2 (similar to what Employee Relations had said verbally during the April 2 2021 meeting with  
3 EH&S). Gjovik said she wanted to forward to her manager (D.P.), noting the week prior he told  
4 her she's not allowed to talk to her coworkers about her environmental and safety concerns or  
5 Apple's offices on toxic waste dumps. She also complained he told her she was not allowed to talk  
6 to her coworkers about the findings from her environmental research or the discussions she had  
7 with EH&S about the Superfund site. She complained he gave her a 'warning' as performance  
8 feedback and implied she may be formally disciplined if she continues to speak out. She explained  
9 he said it was only a warning for now due to her 'mental health issues,' referencing the PTSD she  
10 was suffering due to her exposure to Apple's illegal chemical dumping at 3250 Scott Blvd.  
11

12  
13 32. On, April 6 2021, Gjovik texted with D.W. and told him more victims came forward  
14 at the apartment next to 3250 Scott Blvd. D.W. warned Gjovik about retaliation and physical  
15 violence, suggesting she should get pepper spray or a taser, get panic buttons, and she should also  
16 worry about surveillance. D.W. also told Gjovik to get therapy. Gjovik asked him if there was  
17 anyone she could escalate to at Apple to look into the issues near 3250 Scott Blvd, noting others  
18 had tried to go through Apple's in house wellness center and Apple failed to properly diagnose  
19 them. D.W. told Gjovik that Apple would just tell them to get therapy too. Gjovik then also  
20 complained about Apple EH&S' poor oversight of 825 Stewart Drive, saying after one week of  
21 research she knew more about the site than EH&S did. D.W. told Gjovik :"*it's all supposed to be*  
22 *sealed under the foundation...but I'm no expert.*"  
23

24  
25 33. On April 8 2021, Gjovik emailed their Apple Human Resources Manager (H.P.)  
26 not knowing the Human Resources Manager was reporting concerns about Gjovik. Gjovik shared  
27 the SF Bay View article about 3250 Scott Blvd and told H.P. that other victims had come forward  
28

1 and she met with a state senator the day prior and me with a city mayor about the matter that day.

2 On April 14 2021, Human Resources forwarded Gjovik's email to Employee Relations writing  
3 *"adding to our agenda for tomorrow."*

4 34. On April 9 2021, Gjovik emailed Employee Relations (J.W.) asking against if she  
5 could talk to her maanger (D.P.) and now asked J.W. if she could *"explain labor laws etc to him*  
6 *or something."* Gjovik also noted that D.P. warned her that Employee Relations *"can get us all*  
7 *fired."*

8  
9 35. On April 9 2021, Apple Employee Relations (J.W.) emailed Apple Human  
10 Resources (H.P.) about Gjovik, writing *"she still needs to allow EH&S to do their job without*  
11 *scaring everyone with inaccurate data. I am concerned about her follow up email sent (below)*  
12 *after I acknowledged her email. She seems to think I told her she can talk to anyone at any time*  
13 *about anything and that's not what I said."*

14  
15 36. On April 11 2021, Gjovik emailed more questions about 825 Stewart Drive to  
16 EH&S and Employee Relations. Gjovik asked about "missing" and "compromised" sub-slab  
17 monitoring ports noted in the reports, about the Record of Decision being out of date for the  
18 CERCLA site, and other issues she recently discovered.

19  
20 37. On April 12 2021, Employee Relations (J.W.) and Human Resources (H.P.) texted  
21 about Gjovik, had a phone call about Gjovik, and attended a meeting with the subject line "discuss  
22 AG." The text exchange discussed following up with one of Gjovik's managers (D.W.) and then  
23 Employee Relations shared a summary of her call with him, noting: *"He supports the message. He*  
24 *called her on cross-examining EHS when she described our call with [EH&S]."* She also noted  
25 that she *"ask[ed] him to be cautious with off the cuff remarks"* with Gjovik.

26  
27 38. On April 14 2021, Gjovik's coworker (M.E.) commented on Gjovik theory that  
28

1 vapor intrusion was occurring at 825 Stweart Drive, because the only other time she fainted like  
2 she did in the office in September 2019, was at the apartment where she was exposed to toxic  
3 waste. M.E, a QA Manager, responded “*definitely seems to be more than a coincidence.*”

4  
5 39. On April 15 2021, Gjovik emailed a Senior Director at Apple (J.C.) to escalate  
6 ‘ethical concerns’ about Apple’s hazardous waste and remediation practices. Gjovik cited the 2016  
7 CalEPA RCRA lawsuit against Apple and quoted Apple’s response, claiming it was contrary to  
8 Apple’s actual practices. Gjovik noted that one of her friends (N.C.) was escalating her concerns  
9 to the head of the Environmental Policy/Lobbying team, a prior US EPA administrator.

10  
11 40. On April 15, Human Resources and Employee Relations met to discuss Gjovik  
12 again with a meeting titled: “[redacted] AG follow up.”

13  
14 41. On April 21, D.W. forwarded to Human Resources (H.P.) an email Gjovik sent him  
15 complaining of a hostile work environment and asking him for help. Apple Employee Relations  
16 met with Gjovik again on April 23 2021. That day, Apple Employee Relations and Human  
17 Resources met to discuss Gjovik in a meeting titled “[Redacted] – AG Follow Up.”

18  
19 42. On April 27 2021, Employee Relations (J.W.) asked for a phone call with Gjovik.  
20 During the call J.W. told Gjovik she must comply with a five-part balancing test if she wants to  
21 consider talking to anyone about workplace safety or Superfund sites. J.W. also threatened to tell  
22 leaders Gjovik was complaining about them and harassed Gjovik to the point Gjovik started crying  
23 and begging J.W. to stop. Gjovik sent an email asking for clarification about the speech rules.

24  
25 43. On April 29 2021, Gjovik emailed her manager (D.W) notes of the discussion  
26 during their 1:1 that day. The notes included that she complained again about the hostile work  
27 environment with D.P. and that D.W. said she could not move under a different manager,  
28 complaints about 825 Stewart Drive being a toxic waste dump, and complained that Employee

1 Relations threatened her to stop talking about safety and Superfunds or else she may be disciplined.  
2 Gjovik also attached a PDF of a document she created with information about a number of Apple  
3 offices on toxic waste dumps including other Superfund sites.

4 44. On April 26, Gjovik sent her weekly status to the management team which included  
5 updates about 3250 Scott Blvd., that she is awaiting a response from EH&S about 825 Stewart  
6 Drive, and that she was “*escalating general policy concerns*” to EH&S, Environmental Policy,  
7 Employee Relations teams, (Apple’s Environmental Policy/Lobbying team is run by a prior US  
8 EPA administrator). The same day, one of the managers who works for D.P., forwarded Gjovik’s  
9 email to D.P and complained he “*would appreciate if this were handled and communicated*  
10 *separately form the full manager list... seems like something best addressed directly.*” D.P.  
11 forwarded Gjovik’s email to Employee Relations (J.W.)

12 45. On April 30 2021, Employee Relations emailed Human Resources noting Gjovik’s  
13 manager (D.P) complained about Gjovik sending emails that mention her “external advocacy”  
14 (referencing Gjovik’s comments about the investigation into the air around 3250 Scott Blvd) and  
15 that it was inappropriate of her to do so. On April 30 2021, D.W emailed Employee Relations  
16 (J.W.) and Helen Polkes (H.P.) confirming he told Gjovik he would not let her transfer to another  
17 manager, and also told them Gjovik told him she thought Apple pressured her to file a worker’s  
18 comp claim in bad faith to limit her ability to sue Apple later. On April 30 2021, there also appears  
19 to have been a phosphine explosion at 3250 Scott Blvd.

20 46. On May 3 2021, Gjovik submitted Public Records Act request to the city of  
21 Sunnyvale and requested an Environmental Impact Assessments they have for 825 Stewart Drive.  
22 The city responded with records on May 7 2021.

23 47. On May 11 2021, Human Resources (H.P.) drafted a response that D.W. could send  
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25  
26  
27  
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1 to Gjovik in response to her concerns from April 29 2021. On May 18, Gjovik’s manager (D.W.)  
2 sent a revised version of the draft email for Gjovik to Human resources (H.P.) and asked if its okay  
3 to send. There were only two major changes – first removing himself from a line about how Gjovik  
4 could work with him and Employee Relations (J.W.) about her concerns about her other manager  
5 (D.P.) said she can work with the manager (D.P) and Employee Relations about her concerns about  
6 D.P. The second change was her manager completely deleting a line in the email that said “*safety*  
7 *is a top priority at Apple and we always welcome employee input.*” Human Resources allowed him  
8 to delete the line about caring about safety and employee concerns, but did tell him to remove the  
9 note about Gjovik talking to D.P. about her concerns about D.P. Gjovik’s manager (D.W.) then  
10 emailed his revised version to Gjovik that day.  
11

12  
13 48. On May 17 2021, Apple EH&S and Employee Relations met with Gjovik again to  
14 discuss her concerns about 825 Stewart Drive. They told her they won’t answer any more of her  
15 questions and everything is safe because they feel it is safe. Gjovik complained to D.P. who  
16 forwarded her email to J.W. and H.P. On May 17 2021, Gjovik reported to H.P. that the worker’s  
17 comp claim H.P. pressured her to file was being investigated by Sedgwick and they wanted to set  
18 it as ‘continuous trauma.’ After notifying H.P. Sedgwick left a mysterious voicemail with Gjovik  
19 late a night claiming that actually they are denying the claim. J.W.’s notes said Sedgwick had “*one*  
20 *call with the adjuster*” and then dismissed the complaint on May 20 2021.  
21

22 49. On May 19 2021, Human Resources (H.P.), Employee Relations (J.W.), and her  
23 manager (D.P.) had a meeting about her titled: “Ashley Gjovik – follow up about EH&S concerns.”  
24 The manager (D.P.) also forwarded the group Gjovik’s notes from her May 19 2021 1:1 with him.  
25 On May 19 2021, Apple EH&S (M.S.) emailed Employee Relations (J.W.) the “*talking points*”  
26 from their last meeting with Gjovik and noted he read it “*almost word for word on the call.*”  
27  
28

1 Around this time Gjovik should have received her mid-year performance review, but she never  
2 received her mid-year or annual performance review and then she was fired.

3 50. On May 21 2021, Gjovik’s manager (D.P.) sent Human Resources and Employee  
4 Relations notes he took from a 1:1 he had with Gjovik. The notes included that Gjovik was worried  
5 Apple was no longer going to test the air because she “*asked too many questions,*” she complained  
6 Apple’s statements about prior test results were misleading and deceptive, that EH&S was  
7 “reading a script” during the meeting, said she was very concerned about 825 Stewart Drive, and  
8 asked him to escalate her concerns. On May 22 2021, Apple’s leave and worker’s comp  
9 administrator emailed Employee Relations (J.W.) details about Gjovik’s medical history,  
10 laboratory and imaging results, and Gjovik’s medical symptoms while living next to 3250 Scott  
11 Blvd. including rashes, facial numbness, circulation issues, arrhythmias, blood pressure issues, and  
12 hallucinations.  
13  
14

15 51. On May 25 2021, Employee Relations (J.W.) emailed Human Resources (H.P.) and  
16 EH&S (M.S.) notes from the May 17 2021 meeting with Gjovik, saying that meeting was to “wrap  
17 up” their discussion about Gjovik’s concerns about 825 Stewart Drive. The notes included that  
18 they refused to answer Gjovik’s technical questions about the prior testing results in the final  
19 report, that they refused to give her a copy of the December 2015 testing results, that they would  
20 not answer her ‘detailed questions’ and would not comment on the land use restrictions at the site.  
21 The notes also included that EH&S did not have a schedule for testing at 825 Stewart Drive and it  
22 may not happen in 2021.  
23

24 52. On June 4 2021, Employee Relations (J.W.) sent a summary of their investigation  
25 into Gjovik’s concerns to her manager (A.L) noting that Gjovik may be escalating the matter.  
26 Employee Relations (J.W.) said there were “*three separate cases*” that were “*all under guidance*”  
27  
28

1 in response to Gjovik’s complaints. She noted Gjovik raised concerns about her Superfund office  
2 and called the US EPA. She then listed the things she supposedly investigated that Gjovik complained  
3 about, listing three peripheral matters, and by omission confirmed she never actually investigated  
4 the concerns Gjovik asked her to investigate.

5  
6 53. On July 9 2021, Gjovik complained to her coworker M.E. that “*the way [Apple’s]*  
7 *testing the air now is bogus.*” She complained about the protocols and tools they were using. M.E.  
8 told Gjovik he was “*glad that [she is] all over this!*”

9  
10 54. On July 18 2021, Gjovik sent her weekly status which noted she was moving  
11 apartments and returning to Silicon Valley on August 5 2021, that she met with a mayor and  
12 senator about the air around 3250 Scott Blvd, and a RCRA-related state bill she had lobbied for  
13 just passed (SB-158 DTSC Reform). She also noted EH&S said the slab is cracked in their building  
14 but won’t give her details about the cracks or the plan to seal the cracks. That day her manager  
15 (D.P.) emailed Human Resources (H.P.) and her other manager (D.W.) saying her status was  
16 “*inappropriate*” and he “[*does not*] appreciate” it.

17  
18 55. On July 26 2021, US EPA requested an onsite inspection of 825 Stewart Drive due  
19 to Gjovik’s disclosures about the cracked slab. Gjovik got coworkers to begin gathering evidence  
20 of the cracked slab on August 3 and 4, before Apple fixed it. On August 4 2021, Employee  
21 Relations suddenly put Gjovik on indefinite administrative leave and told her she was removed  
22 from the workplace and all workplace interactions, and told to stop talking to her coworkers. Apple  
23 then conducted an incredible amount of EH&S activities at 825 Stewart Drive starting on August  
24 4 2021. The US EPA inspection occurred on August 19 2021 and Gjovik did not learn about it  
25 until June 2022.

26  
27 56. Gjovik filed a formal complaint with US EPA on August 29 2021, complaining of  
28

1 Apple’s conduct related to 825 Stewart Drive, including misrepresentations, intimidation,  
2 negligence, recklessness, lack of due diligence, and refusal to report issues to US EPA. Gjovik  
3 also complained about “*multiple types of retaliation for continuing to speak about [her] concerns*  
4 *about... Apple’s unethical if not illegal behavior related to [825 Stewart Dive].*”  
5

6 57. Gjovik filed a complaint with U.S. Department of Labor on August 29 2021  
7 alleging whistleblower retaliation (Complaint No. ECN76833; Case No. 9-3290-21-720). On  
8 September 8 2021, Gjovik complained to US Dept of Labor about the warning from her boss in  
9 March 2021, her work being reassigned in May 2021, assignment of unfavorable projects in July  
10 2021, being put on indefinite administrative leave in August 2021. She also described and attached  
11 her complaints to California Dept. of Labor, U.S. EPA, Cal. EPA, U.S. NLRB, U.S. EEOC, and  
12 U.S. SEC.  
13

14 58. Apple Employee Relations (E.O.) contacted Gjovik on September 3 and 7 asking  
15 for her to meet with him, despite her previously requesting to keep their discussion in writing. E.O.  
16 acted as if Apple was still investigating Gjovik’s concerns, not investigating Gjovik.  
17

18 59. On September 9 2021, around 12pm, Apple Employee Relations (J.W.) and EH&S  
19 (A.J.) emailed the Apple Real Estate and EH&S leader who Gjovik spoke with about 3250 Scott  
20 Blvd back in September 2020 (E.S.). The email includes notes from their July 7 2021 meeting with  
21 Gjovik about her concerns about 825 Stewart Drive. The notes documented that Apple confirmed  
22 it told Gjovik it felt the slab inspection and sealing was voluntary and optional, and that Apple  
23 intentionally did not report the work to the US EPA. The notes also confirmed Apple intentionally  
24 would not test the air prior to fixing the cracks, the notes also include Gjovik’s concerns about the  
25 plan to use passive sorbent testing instead of Summa canisters, and to test with HVAC on and  
26 people in the building, instead of HVAC off and no people in the building. The notes also captured  
27  
28

1 Gjovik’s comments that her discussions with the California Department of Environmental Health  
2 Investigations Unit and US EPA believed it best to test with Summa, longer durations than 10  
3 hours, and with HVAC off. The notes included EH&S (M.S.) claiming neither agency are “the  
4 experts” about vapor intrusion, said vapor intrusion and Superfund sites are not connected  
5 concepts, and complained Apple was already going “*above and beyond*” and Gjovik was asking  
6 them to go “*above and beyond going above and beyond.*” The notes also documented that Gjovik  
7 has asked about hazardous waste at other Apple buildings ant they refused to answer her questions  
8 about other buildings.  
9

10 60. On September 9 2021, around 2 p.m., an Apple “Workplace Violence and Threat  
11 Assessment” investigator (A.K.) contacted Gjovik insisting she get on the phone with him ‘within  
12 the hour.’ Gjovik responded within two minutes saying she was happy to help but asked to keep  
13 the conversation in writing. She also complained of ‘witness intimidation’ the day before her  
14 affidavit. Around 3 p.m. (A.K.) responded to Gjovik claiming she refused to participate and he  
15 was suspending all of her Apple accounts. Gjovik replied again saying she was willing to cooperate  
16 and also asked exactly what the allegations are against her.  
17  
18

19 61. On September 9 2021, around 4 p.m., Gjovik emailed US Department of Labor an  
20 updated response, also summarizing her meetings with Apple EH&S and complaining Apple  
21 refused to notify the federal EPA of changed circumstances at the site (*e.g.*, cracks in the cement  
22 floor requiring repair), that Apple said it won’t answer any more of her questions about the  
23 Superfund site. Gjovik also included her emails with US EPA about Apple and the site.  
24

25 62. On September 9 2021, around 6:20 p.m., Apple Human Resources (M.B, the  
26 manager of H.P.) emailed Gjovik’s Vice President (Y.B.) suggested Gjovik’s employment be  
27 terminated due to Gjovik refusing to get on the call with A.K. (and noting that actually also an  
28

1 Apple lawyer was waiting on that call as well, a prior NY Criminal District Attorney, S.J.), that  
2 Gjovik had posted some stuff on Twitter that violated Apple’s policies, and that Gjovik had sent  
3 Employee Relations redacted documents and that also violated policies. Y.B. said he agreed, and  
4 Human Resources sent him the email to send Gjovik telling her she was fired.  
5

6 63. On September 9 2021, at around 7 p.m., Apple terminated Gjovik’s employment.  
7 Gjovik notified the agencies, including US Dept. of Labor that night.  
8

## 9 VI. PROTECTED ACTIVITY

10 64. From September 2020 through September 2021, prior to Gjovik’s termination,  
11 Gjovik engaged in protected activity related to CERCLA site regulatory compliance;  
12 treatment/storage/disposal of hazardous waste at an active RCRA site; Clean Air Act air emissions,  
13 hazardous air pollutants, and standards for control technologies; and concerns about chemicals  
14 regulated under the TSCA. Gjovik had a reasonable belief misconduct occurred and that there was  
15 a threat to the environment and to the public. Gjovik’s activities were “*grounded in conditions*  
16 *constituting reasonably perceived violations of environmental statutes.*”  
17

18 65. Acts are not protected simply because someone says, ‘the magic words.’ Rather,  
19 the evidence, based on actions as well as words, must show that the whistleblower’s acts were in  
20 furtherance of the purpose of the environmental statutes. Thus, findings of protected environmental  
21 activities are often encapsuled within some specific form (such as a phone call, memo, report,  
22 complaint, or letter) and with a concrete date, time, and parties involved. Instead of a bare reference  
23 to an isolated statement, there is then analysis of the circumstances surrounding that event.  
24 Similarly, a finding of Protected Activity often includes discrete references to tangible objects or  
25 substances, such the presence of a specific hazardous waste drum in a specific location, the design  
26 of a specific evaporation pool, a specific contract or deed, a specific report of test results, or the  
27  
28

1 location of a specific chemical spill.

2 66. In addition, protected environmental activities commonly include the  
3 whistleblower acting as ‘the adult in the room’ related to environmental regulations and activities  
4 – often questioning, challenging, and protesting the employer and/or other party’s actions.  
5

6 **A. FILING ENVIRONMENTAL COMPLAINTS AND PROVIDING INFORMATION TO THE**  
7 **US EPA (OR CAL-EPA, COUNTY HAZ MAT, ETC.)**

8 67. Gjovik emailed and called the US EPA in April 2021 with questions about her  
9 Apple office at 825 Stewart Drive (the “TRW Microwave” NPL Superfund site), and also  
10 mentioned her illness next to 3250 Scott Blvd and shared a link to the article she wrote and which  
11 was published in SF Bay View.

12 68. In April 2021, more victims came forward from the apartments next to 3250 Scott  
13 Blvd, some of them Apple employees, and Gjovik connected them with CalEPA to file their own  
14 complaints and request investigations.  
15

16 69. In July 2021, Gjovik emailed the US EPA notifying them about the cracked slab  
17 that Apple refused to tell US EPA about the cracked slab, that Apple refused to engage US EPA  
18 in the air testing, and that she found there had never been an environmental assessment for the site.  
19 These disclosures triggered the U.S. EPA on site inspection the next month.  
20

21 70. On August 29 2021, Gjovik filed a formal complaint to the US EPA.

22 **B. MAKING ENVIRONMENTAL COMPLAINTS TO OSHA.**

23 71. Around June 2021, Gjovik called CalOSHA with concerns about the vapor  
24 intrusion at 825 Stewart Drive, asking for information about worker health/safety requirements at  
25 the Superfund site, and complained Apple was ignoring her concerns. (*Dixon v. DOI; Jones v.*  
26 *EG&G*).  
27

28 72. On August 29 2021, Gjovik filed a complaint to US Dept. of Labor OSHA alleging

1 whistleblower retaliation for reporting issues to the US EPA and to management.

2 **C. FILING ENVIRONMENT RELATED PUBLIC RECORDS REQUESTS**

3 73. In April 2021, Gjovik requested a copy of the TRW Microwave Five-Year-Review  
4 report from 2019 and a copy of the May 2015 vapor intrusion testing results. Apple got the US  
5 EPA to post the 2019 FYR on the public EPA website and sent Gjovik a link. Apple refused to  
6 provide the May 2015 vapor intrusion testing results to Gjovik, and implied a separate report did  
7 not exist, so Gjovik asked US EPA about it and the US EPA wrote amongst themselves that  
8 Apple's statement sounded incorrect that there was not a separate report, and US EPA was able to  
9 obtain the December 2015 report and did post it to the US EPA website.  
10

11 74. On May 3 2021, Gjovik filed a Public Records Act request to the city of Sunnyvale  
12 requesting information on any environmental impact reports or assessments for 825 Stewart Drive.  
13 Gjovik shared the information she received with coworkers and with the US EPA, raising concerns  
14 about the lack of any formal environmental impact report. (*Williams v. DSID, Anderson v. Metro*  
15 *Wastewater*).  
16

17 **D. GATHERING EVIDENCE OF ENVIRONMENTAL ISSUES FOR THE US EPA**

18 75. In September 2020, Gjovik hired an industrial hygienist to test the air at her  
19 apartment next to 3250 Scott Blvd. She paid for a TO-17 panel based on a two hour sorbent test  
20 which she learned was insufficient and she should have used a Summa canister – however the  
21 results did show a number of industrial chemicals.  
22

23 76. In July 2021, Gjovik discussed with her coworker (M.E.) that it was important they  
24 get photographs of the cracks in the slab, and also discussed running their own air testing without  
25 Apple's knowledge, so they had independent results to compare to. She has this wisdom through  
26 her experience next to 3250 Scott Blvd, where she did air testing, and she also did her own  
27  
28

1 inspection of the toxic waste ‘cap’ in the garage of her building – where she found cracks in the  
2 cement and some sort of substance oozing out. She took photos and sent them to CalEPA.

3 77. In August 2021, Gjovik organized her coworkers (S.M., E.B.) to capture  
4 photograph evidence of the cracked slab prior to a scheduled EH&S visit where Gjovik worried  
5 Apple would conceal evidence. Gjovik notified Apple Employee Relations they were doing this  
6 and they can’t cover up evidence. (*Mosbaugh v. Georgia Power Co.*, *Melendez v. Exxon Chemicals*  
7 *Americas*, *Adams v. Coastal Product Operations*).

9 **E. MAKING ENVIRONMENTAL RELATED COMPLAINTS TO THE EMPLOYER**

10 78. On March 17 2021, Gjovik emailed her manager’s management team responding  
11 to a notification about vapor intrusion testing, and she provided information about their office  
12 being a Superfund site, about vapor intrusion, and about what happened to her in 2020 next to  
13 3250 Scott Blvd.

14 79. In March 2021, Gjovik sent her manager (D.P.) an email summarizing her research  
15 into 825 Stewart Drive thus far, and raised a number of concerns about insufficient oversight and a  
16 number of historical hazardous waste issues and environmental violations. She included photos  
17 from the remediation and complained that the record of decision was expired and most recently  
18 the remediation of the site focused on activities like pouring salad dressing and cheese whey into  
19 the ground below their office. She also created map of the office floor plans and overlaid the history  
20 air testing results in the indoor air and under the slab and shared a copy of it.

21 80. In April 2021, Gjovik complained to one of her managers (D.W.) about Apple’s  
22 lack of monitoring and testing at her office, and her concerns about Apple’s current operations and  
23 maintenance plans, which she found to be insufficient. Gjovik also created a document listing a  
24 number of Apple’s buildings in Santa Clara County that are on hazardous waste remediation sites,  
25  
26  
27  
28

1 with links to the US EPA websites and details on the contamination. Gjovik sent this to D.W. in  
2 April 2021, and it was sent to Apple Employee Relations in May 2021.

3 81. In April 2021, Gjovik emailed Apple EH&S, met with Apple EH&S, and prepared  
4 a Keynote presentation for Apple EH&S with her research findings about her office at 825 Stewart  
5 Drive. Gjovik asked and complained about the land use covenant no longer being consistent with  
6 state law but no timeline to update it, the CERCLA Record of Decision no longer being in  
7 operation and new Record of Decision being needed but no timeline published about next steps,  
8 about reports of prior inspections and testing of the site, about the integrity of the sub-slab  
9 monitoring and depressurization system, about the depressurization system design and operations,  
10 about the quality of the test plans for the upcoming slab inspections and air testing, about “missing”  
11 and “compromised” sub-slab testing ports, and specific details about Apple’s compliance  
12 requirements at the site under the land use covenant. (*Jayko v Ohio EPA*).

15 82. In April 2021, Gjovik emailed an Apple Senior Director (J.C.) with concerns about  
16 her office at 825 Stewart Drive, but also concerns with Apple’s general policies and Apple’s  
17 oversight of all of their offices on remediation sites.

19 83. In April 2021, Gjovik complained to Apple Inclusion & Diversity about the  
20 disparate impact of remediation site chemical exposure on non-white and non-male people,  
21 including Apple contractors and visitors to Apple properties. Apple I&D asked Gjovik for a  
22 business case for not poisoning Black people, to which Gjovik then complained about to other  
23 Apple management, including J.C.

25 84. In April 2021 – September 2021, Gjovik complained to coworkers about Apple’s  
26 statements about her office and contrast with Apple’s public statements to Reuters about the 2016  
27 CalEPA DTSC lawsuit against Apple over Apple’s RCRA universal waste violations under  
28

1 California Health and Safety Code §§ 25100 *et seq.* and California Code of Regulations Title 22  
2 Division 4.5 § 66260.1 *et seq.*. The lawsuit Apple noted that Apple was the RCRA operator at the  
3 two facilities but failed to submit hazardous waste plans and notices, Apple caused the unlawful  
4 storage and treatment of hazardous waste, transported hazardous waste illegally to Canada, and  
5 failed to file required reports. The lawsuit had eleven claims against Apple and Apple settled for  
6 \$450,000 and entered a five-year consent decree.<sup>4</sup> Apple claimed it was a misunderstanding and  
7 they always go above legal requirements, but Gjovik complained Apple told her they only do the  
8 minimum of what is absolutely legally required.  
9

10 85. In May 2021, Gjovik complained to Apple Employee Relations about her managers  
11 (D.W. and D.P.) interfering with and cancelling a project she had designed and implemented to  
12 dramatically reduce e-waste (universal hazardous waste under RCRA) and did decrease waste, but  
13 then D.W and D.P. cancelled it. Employee Relations claimed they investigated the issue but then  
14 had no recollection of the complaint when questioned directly, which Gjovik then escalated to the  
15 head of Employee Relations requesting they actually investigate the issue, a request which  
16 Employee Relations denied.  
17

18 86. In June-July 2021, Gjovik questioned Apple about the regulatory requirements for  
19 them to involve US EPA in their slab inspection and air testing, about US EPA reporting  
20 requirements about the cracks in the slab, at 825 Stewart Drive. (*Dodd v Latex*). After Apple  
21 repeatedly claimed they had no reporting requirement, Gjovik then notified US EPA and asked US  
22 EPA about it, which led the US EPA to investigate and request a site inspection of the cracked slab  
23 due to Gjovik's disclosures.  
24

25 87. In August 2021, Gjovik drafted an "Issue Confirmation" with Apple Employee  
26

27 \_\_\_\_\_  
28 <sup>4</sup> *People of the State of California v Apple Inc*, Case No. 16-CV-303579, Superior Court of California,  
County of Santa Clara, (Dec. 1 2016).

1 Relations summarizing the concerns she wanted them to investigate. The document included  
2 complaints about violations of environmental laws, toxic torts, shady real estate deals, and fraud.  
3 Gjovik also filed a copy of the Issue Confirmation to Business Conduct, attached to a formal  
4 Business Conduct complaint about the oversight of the property and concerns about the Apple  
5 Board of Directors Audit Committee, conflicts of interests, and shady real estate dealings.  
6

7 **F. SPEAKING TO THE PRESS ABOUT ENVIRONMENTAL CONCERNS**

8 88. In March 2021, Gjovik wrote an article about hazardous waste remediation policy  
9 concerns and about her experience next to 3250 Scott Blvd. The article was published in the SF  
10 Bay View newspaper. Gjovik had filed an Apple Business Conduct request to request permission  
11 to do so prior (as Apple demands), and she was approved to proceed with the article as long as she  
12 did not discuss Apple or her Superfund site office at 825 Stewart Drive. Gjovik notified her  
13 managers prior to the publication and assured them Business Conduct approved but noted they  
14 didn't want her to "*bring up the toxic nightmare that is Stewart I.*" Gjovik said her goal with the  
15 article is to "*make the public aware.*" Gjovik shared a link to the article in her March 17 2021  
16 email about 825 Stewart Drive, and in her emails to the US EPA.  
17

18 89. In July 2021, Gjovik began talking to the New York Times about her concerns  
19 about her Superfund office and the hazardous waste issues next to 3250 Scott Blvd. Gjovik told  
20 Apple and the US EPA she was doing this, and US EPA even informed the Superfund responsible  
21 party, Northrop Grumman, providing them the name of the reporter. (*Anderson v Metro*  
22 *Wastewater*).  
23

24 90. In August-September 2021, Gjovik spoke to numerous journalists for newspapers  
25 and publications around the world about her concerns about Apple's oversight of her Superfund  
26 office and response to her concerns. On September 2 2021, Financial Times published an article  
27  
28

1 about Gjovik's complaints to the US government against Apple and wrote about Gjovik's  
2 Superfund office at 825 Stewart Drive and also wrote about the 2016 DTSC lawsuit against Apple  
3 over RCRA violations, after Gjovik shared a copy of the lawsuit press release with the reporter.  
4

5 **G. REPORTING ENVIRONMENTAL CONCERNS TO LEGISLATURES AND CONGRESS**

6 91. Around April 2021, Gjovik met with a state senator, a state assembly member,  
7 and a city major to express concerns about possible environmental violations and the need for  
8 improved legislation to better protect tenants from hazardous waste chemical exposure. The  
9 senator's policy director emailed Gjovik that he shared her concerns with the California senate.  
10

11 **H. REPORTING ENVIRONMENTAL CONCERNS TO LAW ENFORCEMENT**

12 92. Around April 2021, Gjovik reported concerns about environmental violations to  
13 the Santa Clara District Attorney's office, and Apple knew she did so. (*Hamilton v. PMB*).  
14

15 **VII. LEGAL CLAIMS**

16 93. The environmental statutes are governed by 29 CFR § 24. Under this statute, 29  
17 CFR § 24.102 mandates that:

18 (a) No employer subject to the provisions of any of the statutes listed in § 24.100(a)  
19 ... may discharge or otherwise retaliate against any employee with respect to the  
20 employee's compensation, terms, conditions, or privileges of employment because  
21 the employee, or any person acting pursuant to the employee's request, engaged in  
22 any of the activities specified in this section.

23 (b) It is a violation for any employer to intimidate, threaten, restrain, coerce,  
24 blacklist, discharge, discipline, or in any other manner retaliate against any  
25 employee because the employee has: (1) Commenced or caused to be commenced,  
26 or is about to commence or cause to be commenced, a proceeding under one of the  
27 statutes listed in § 24.100(a) or a proceeding for the administration or enforcement  
28 of any requirement imposed under such statute; (2) Testified or is about to testify in  
any such proceeding; or (3) Assisted or participated, or is about to assist or  
participate, in any manner in such a proceeding or in any other action to carry out  
the purposes of such statute.

This section applies to all six environmental statutes listed in § 24.100(a): the CERCLA, the Clean

1 Air Act, the Clean Water Act, the TSCA, the RCRA/SWDA, and the Safe Drinking Water Act.

2 94. These protections apply to the purpose and requirements of the Acts, thus  
3 government reporting and proceedings may involve the U.S. EPA, but also the state or county/city  
4 environmental health and HazMat agencies, as U.S. EPA delegates oversight and enforcement of  
5 many aspects of these statutes to local governments. Examples of delegated oversight in California  
6 includes the emissions standards for hazardous air pollutants (HAPs) and permits under the CAA;  
7 the Water Quality Standards and the National Pollution Discharge Elimination System (NPDES)  
8 Programs under the CWA; the Hazardous Waste Program under RCRA; and the Drinking Water  
9 and Underground Injection Control Programs under the SDWA.  
10

11  
12 **A. COUNT I: APPLE VIOLATE THE CERCLA 42 U.S.C. § 9601 ET SEQ AND 29**  
13 **C.F.R. PART 24.**

14 95. The COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY  
15 ACT<sup>5</sup> (the “CERCLA”) of 1980 and amendments, codified as 42 U.S.C. § 9601 et seq., provides  
16 protections for employees who report potential violations regarding clean-up of uncontrolled or  
17 abandoned hazardous waste sites as well as accidents, spills, and other emergency releases of  
18 pollutants and contaminants into the environment. The CERCLA contains an Employee Protection  
19 provision under 42 U.S.C. § 9610 which states:

20 (a) Activities of employee subject to protection. No person shall fire or in any other  
21 way discriminate against, or cause to be fired or discriminated against any  
22 employee or any authorized representative of employees by reason of the fact that  
23 such employee or representative has provided information to a State or to the  
24 Federal Government, filed, instituted, or caused to be filed or instituted any  
proceeding under this Act, or has testified or is about to testify in any proceeding  
resulting from the administration or enforcement of the provisions of this Act.

25 96. The CERCLA NPL "hazardous substance" list includes substances defined as  
26

27  
28 <sup>5</sup> 42 U.S.C. § 9610

1 "hazardous waste" under RCRA, as well as substances regulated under the Clean Air Act (CAA),  
2 Clean Water Act (CWA), and Toxic Substances Control Act (TSCA). CERCLA specifically  
3 requires that remedies attain any legally applicable or relevant and appropriate requirements (i.e.,  
4 standards, criteria, or limitations under federal or more stringent state environmental laws).

5  
6 97. The National Priorities List ("NPL") is EPA's priority hazardous substance sites  
7 targeted for cleanup. These federal NPL "Superfund" sites are among the most heavily  
8 contaminated and difficult to clean up. Rather than establishing individual cleanup standards,  
9 CERCLA assures that remedies are based on cleanup standards and criteria established by other  
10 laws (e.g., CAA, CWA, and RCRA) in conjunction with site-specific risk factors. In 2002, the  
11 Brownfields Revitalization Act added new oversight for non-NPL clean-up sites, called  
12 "Brownfields," under 42 U.S.C. 9604(k).

13  
14 98. Once the remedial actions are completed, continuing site operation and  
15 maintenance activities are conducted to maintain the effectiveness of the remedy and to ensure that  
16 no new threat to human health or the environment arises. The operation and maintenance phase of  
17 the CERCLA response process may include activities such as ground water pump and treat, and  
18 cap maintenance. EPA conducts review of operation and maintenance activities to ensure that the  
19 remedy selected is still protective of human health and the environment. Institutional Controls  
20 often include Land Use Covenants with local governments.<sup>6</sup> LUCs "run with the property,"  
21 meaning its provisions are binding on all current and future property owners and users.

22  
23 99. CERCLA also provides for the clean-up of accidents, spills, and other emergency  
24 releases of hazardous substance. The CERCLA sets threshold values for releases of hazardous  
25 substances ("reportable quantities") that, when met or exceeded, trigger reporting requirements to  
26

27  
28 <sup>6</sup> In California, governed under Civil Code section 1471 and Health and Safety Code section 25202.5,  
25355.5, 25395.99, and California Code of Regulations, title 22, section 67391.1.

1 the appropriate federal and state agencies. CERCLA regulated “reportable quantity” substances  
2 include: arsine, chlorine, phosphine, trichloroethylene, toluene, ethylbenzene, vinyl chloride,  
3 xylene, 1,2-dichloroethylene, 1,1,1-trichloroethane, 1,2-dichloroethane (many of which were the  
4 subject of Gjovik’s complaints at 3250 Scott and 825 Stewart, and were found in her air testing  
5 next to 3250 Scott Blvd).

7 **Apple is a Covered Employer under CERCLA 42 U.S.C. § 9610.**

8 100. Apple is an Employer and the Employer of Gjovik, and thus Apple is a “person” as  
9 referenced in § 9610 (“[n]o person...”). The U.S. Department of Labor’s jurisdiction over the  
10 Employer under this Employee Protection provision (§ 9610) is not related to the U.S. EPA’s  
11 jurisdiction over the Employer with respect to the subject matter of CERCLA (42 U.S.C. § 9601  
12 *et seq.*). Instead, once U.S. Department of Labor jurisdiction is established, part of the Complainant  
13 Employee’s burden is to prove their Protected Acts touched upon the purposes of the CERCLA(42  
14 U.S.C. § 9601 *et seq.*) and that she reasonably believed there was a potential violation of the Act.<sup>7</sup>

16 **Gjovik Engaged in Protected Activity in furtherance of the CERCLA 42 U.S.C. §**  
17 **9601 et seq.,**

18 101. Gjovik engaged in activity projected under the CERCLA when she complained to  
19 a supervisor and other employer personnel who can address potential environmental violations;  
20 when she complained to the EPA or a state or local government agency regarding potential  
21 environmental violations and/or issues related to an Environmental Statute; provided information  
22 or assisting in an environmental inspection by the EPA or a state or local government agency;  
23 participated, assisted, testified, or prepared to do the former, in an investigation and/or proceeding  
24 related to the CERCLA. Gjovik’s complaints included suspected violations of the Act, as well as  
25  
26

27 \_\_\_\_\_  
28 <sup>7</sup> *Trueblood v Von Roll America Inc*, ALJ 2002-WPC-3 to 6, 2003-WPC-1, at page 38 (Mar. 26 2003);  
*Sasse v US Dept. of Justice*, ARB Case No. 99-053, ALJ Case No. 98-CAA-7 (August 31 2000).

1 quality control concerns and concerns about insufficient controls.

2 **Gjovik’s Acts are Protected because they were Subjectively Reasonable**

3 102. Gjovik engaged in protected activity when she provided information “*grounded in*  
4 *conditions constituting reasonably perceived violations*” of the environmental acts at issue.  
5 Circumstances demonstrate Gjovik’s belief that violations of environmental statutes were  
6 occurring. Gjovik provided information that “*related definitively and specifically*” to the subject  
7 matter of the particular statute under which protection is afforded.  
8

9 103. Gjovik’s concerns were affirmed and supported by her coworkers (including M.E.,  
10 S.M., E.B., A.A., and J.M. – all of which worked in quality assurance); Gjovik’s concerns were  
11 validated and even formally documented by environmental health and occupational exposure  
12 doctors, by scientists in environmental agencies, and community environmental activists. Gjovik’s  
13 complaints repeatedly referenced publicly available data on government websites, was based on  
14 public records request documents, referenced news articles in reputable publications about her  
15 office and comparable situations locally, and she even had other victims come forward after a  
16 newspaper published an article she wrote. Gjovik believed that Apple was acting in violation of  
17 the CERCLA and Gjovik’s belief was objectively reasonable.  
18  
19

20 104. The public land use covenant for 825 Stewart Drive clearly stated that no actions  
21 should disturb the remedy and monitoring system without prior approval, and that any discovery  
22 of damage to the remedy and monitoring system must be reported. This covenant applied to Apple.  
23

24 105. On July 28 2021, the US EPA emailed Gjovik and said it took her communications  
25 with them and her observations seriously, and said “*thank you for voicing your concerns and*  
26 *providing us with such detailed information.*”  
27  
28

1           **Gjovik’s Acts are Protected because they were Objectively Reasonable.**

2           106.     A reasonable person with the same training, knowledge, and experience as Gjovik  
3 would also believe the conduct complained of touched up on the purpose of the environmental  
4 law. The sites Gjovik complained about are formal NPL Superfund sites, including:

- 5           a.     The “TRW Microwave” Superfund site (EPA ID: CAD009159088) and “Triple Site”  
6                 (EPA ID CAN000900265)  
7           b.     The “Advanced Micro Devices” site (EPA ID CAD048634059)  
8           c.     The “Synertek” Superfund site (EPA ID CAD990832735)  
9           d.     The “Intersil/Siemens” Superfund site (EPA ID CAD041472341)

10           All of these sites have public US EPA websites and documentation.

11           107.     Under § 9601(20)(A), the term “owner or operator” means ... *“in the case of an*  
12 *onshore facility ... any person owning or operating such facility,”* which would include Apple as  
13 a tenant. Under §9601(9), the term “facility” means ... *“any building, structure ... or any site or*  
14 *area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise*  
15 *come to be located,”* which would include her office at 825 Stewart Drive.

16           108.     Gjovik’s disclosures about the TRW Microwave site were specific and important  
17 enough to trigger an onsite inspection of her office at 825 Stewart Drive on August 19 2021, where  
18 the US EPA found a number of issues including missing and compromised sub-slab vent ports,  
19 concerning slab penetrations, and toxic waste fumes being piped into the HVAC system. US EPA  
20 also ordered Apple to conduct indoor air testing, oversaw the testing plan and the preparation work,  
21 made Apple use the Summa canister like Gjovik told them to, and made Apple decommission the  
22 sub-slab vent ports like Gjovik told them to. US EPA also made Apple fix the HVAC gas chamber.  
23  
24  
25

26           109.     Gjovik’s concerns about the Synertek groundwater plume migrating under the  
27 apartments was also confirmed, and US EPA also discovered the apartment (where Gjovik lived  
28

1 in 2020) was constructed on top of one of the groundwater monitoring wells and much effort was  
2 put into finding the rogue well in 2022.

3  
4 **B. COUNT II: APPLE VIOLATED THE CLEAN AIR ACT 42 U.S.C. § 7401 AND 29  
C.F.R. PART 24.**

5 110. The CLEAN AIR ACT (THE “CAA”) of 1965 and amendments, codified as 42 U.S.C.  
6 § 7401 et seq., seeks to protect human health and the environment from emissions that pollute  
7 ambient air. The Clean Air Act Amendments of 1977 added an Employee Protection provision at  
8 42 U.S.C. § 7622, which mandates:  
9

10 (a) Discharge or discrimination prohibited. No employer may discharge any  
11 employee or otherwise discriminate against any employee with respect to his  
12 compensation, terms, conditions, or privileges of employment because the  
13 employee (or any person acting pursuant to a request of the employee)- (1)  
14 commenced, caused to be commenced, or is about to commence or cause to be  
15 commenced a proceeding under this Act or a proceeding for the administration or  
16 enforcement of any requirement imposed under this Act or under any applicable  
17 implementation plan, (2) testified or is about to testify in any such proceeding, or  
18 (3) assisted or participated or is about to assist or participate in any manner in such  
19 a proceeding or in any other action to carry out the purposes of this Act.

20 42 U.S.C. § 7622 Provides protections for employees who report potential violations regarding air  
21 emissions from area, stationary, and mobile sources into the air. CAA limits the emission of  
22 pollutants into the atmosphere in order to protect human health and the environment from the  
23 effects of airborne pollution.

24 111. Section 112 of the act establishes programs for protecting public health and the  
25 environment from exposure to toxic air pollutants.<sup>8</sup> Several of the major program areas for CAA  
26 Compliance Monitoring include: NESHAP Air Toxics, Prevention of Accidental Releases, and  
27 New Source Review. Owners and operators of sources producing, processing, and storing

28 <sup>8</sup> 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>

1 extremely hazardous substances must identify hazards associated with an accidental release,  
2 design and maintain a safe facility, prepare a Risk Management Plan (“RMP”), and minimize  
3 consequences of accidental releases that occur. The Clean Air Act governs specific chemicals  
4 including arsine, phosphine, chlorine, vinyl chloride.<sup>9</sup>

5  
6 112. Section 112(r) of the Clean Air Act Amendments requires EPA to publish  
7 regulations and guidance for chemical accident prevention at facilities that use certain hazardous  
8 substances. CalARP is California’s program to implement the federal Accidental Release  
9 Prevention program (ARP) with certain additional provisions specific to California. CalARP  
10 requires businesses that handle more than a threshold quantity of any of a list of extremely  
11 hazardous substances to prepare a Risk Management Plan (RMP) in order to analyze “potential  
12 accident factors that are present and the mitigation measures that can be implemented to reduce  
13 this accident potential.” The requirements for CalARP are found in Article 2 of Chapter 6.95 of  
14 Division 20 of the Health and Safety Code. The state Office of Emergency Services has  
15 responsibility for developing regulations that establish statewide standards for CalARP. These  
16 regulations are found in Chapter 4.5 of Division 2 of Title 19 of the California Code of Regulation  
17 Investigation and regulation of sources and types of pollution occur at both the state and local  
18 levels.  
19  
20

21 113. The Clean Air Act Amendments of 1990 added a Title V to the act which requires  
22 states to administer a comprehensive permit program for the operation of sources emitting air  
23 pollutants. The California Air Resources Board (CARB) is California’s lead air agency and  
24 controls emissions from mobile sources, fuels, and consumer products, as well as air toxics. CARB  
25 also coordinates local and regional emission reduction measures and plans that meet the NAAQS  
26

27 \_\_\_\_\_  
28 <sup>9</sup> US EPA, *List of Lists*, [https://www.epa.gov/system/files/documents/2022-12/List\\_of\\_Lists\\_Compiled\\_December%202022.pdf](https://www.epa.gov/system/files/documents/2022-12/List_of_Lists_Compiled_December%202022.pdf)

1 and California Ambient Air Quality Standards (CAAQS). CARB is charged with developing the  
2 State’s SIP, which details the State’s plan to achieve the NAAQS and is submitted to U.S. EPA  
3 for review.<sup>10</sup>

4 **Apple is a Covered Employer under the Clean Air Act 42 U.S.C. § 7622.**

5  
6 114. Apple is an Employer and the Employer of Gjovik, and thus Apple is a “person” as  
7 referenced in § 7622 (“[n]o person...”). The U.S. Department of Labor’s jurisdiction over the  
8 Employer under this Employee Protection provision (§ 7622) is not related to the U.S. EPA’s  
9 jurisdiction over the Employer with respect to the subject matter of the Clean Air Act (§ 7401 *et*  
10 *seq.*). Instead, once U.S. Department of Labor jurisdiction is established, part of the Complainant  
11 Employee’s burden is then to prove their Protected Acts touched upon the purposes of the Clean  
12 Air Act (§ 7401 *et seq.*) and that she reasonably believed there was a potential violation of the  
13 Act.<sup>11</sup>

14  
15 **Gjovik Engaged in Protected Activity in furtherance of the Clean Air Act 42 U.S.C.**  
16 **§ 7401 et seq.,**

17  
18 115. Gjovik engaged in activity projected under the CAA when she complained to a  
19 supervisor and other employer personnel who can address potential environmental violations;  
20 when she complained to the EPA or a state or local government agency regarding potential  
21 environmental violations and/or issues related to an Environmental Statute; provided information  
22 or assisting in an environmental inspection by the EPA or a state or local government agency (*e.g.*,  
23 the California Air Resources Board); participated, assisted, testified, or prepared to do the former,  
24 in an investigation and/or proceeding related to the CAA.

25  
26 \_\_\_\_\_  
27 <sup>10</sup> California ARB, 2022 State Strategy for the State Implementation Plan, Attachment A,  
[https://ww2.arb.ca.gov/sites/default/files/2022-09/2022\\_SSS\\_Final\\_EA\\_Att\\_A.pdf](https://ww2.arb.ca.gov/sites/default/files/2022-09/2022_SSS_Final_EA_Att_A.pdf)

28 <sup>11</sup> *Trueblood v Von Roll America Inc*, ALJ 2002-WPC-3 to 6, 2003-WPC-1, at page 38 (Mar. 26 2003);  
*Sasse v US Dept. of Justice*, ARB Case No. 99-053, ALJ Case No. 98-CAA-7 (August 31 2000).

1           **Gjovik’s Acts are Protected because they were Subjectively Reasonable**

2           116. Gjovik engaged in protected activity when she provided information “grounded in  
3 *conditions constituting reasonably perceived violations*” of the environmental acts at issue.  
4 Circumstances demonstrate Gjovik’s belief that violations of environmental statutes were  
5 occurring. Gjovik provided information that “*related definitively and specifically*” to the subject  
6 matter of the particular statute under which protection is afforded.  
7

8           117. Gjovik consulted air quality experts and environmental scientists, hired an  
9 industrial hygienist, and ran numerous indoor air tests including a formal TO-17 panel which did  
10 gather evidence that was then used by the US EPA in RCRA/CAA investigations.  
11

12           **Gjovik’s Acts are Protected because they were Objectively Reasonable**

13           118. The main emissions of concern generated by the semiconductors and electronics  
14 manufacturing industry include greenhouse gases, toxic, reactive, and corrosive substances (for  
15 example, acid fumes, dopant, cleaning gases, and volatile organic compounds), resulting from  
16 diffusion, cleaning, and wet-etching processes. Environmental monitoring activities should be  
17 based on direct or indirect indicators of emissions, effluents, and resource use applicable to the  
18 particular project.<sup>12</sup>  
19

20           119. Gjovik’s air monitoring showed a pattern of timed spikes of volatile organic  
21 compounds in the air resembling a factory exhaust system. Chemicals at 3250 Scott included CAA  
22 Regulated Substance such as Acrylonitrile, Ammonia, Arsine, Bromine, Chlorine, Diborane,  
23 Dichlorosilane, Fluorine, Methyl chloride, Phosphorous trichloride Phosphine, and Silane.<sup>13</sup> Many  
24 of these chemicals were present at 3250 Scott and even found in Gjovik’s indoor air. Apple  
25

26 \_\_\_\_\_  
27 <sup>12</sup> World Bank Group, *Environmental, Health, and Safety Guidelines for Semiconductors & Other*  
*Electronics Manufacturing*, April 30 2007.

28 <sup>13</sup> US EPA, CAA, <https://www.epa.gov/rmp/list-regulated-substances-under-risk-management-program-program>

1 reported to the Bay Area Air Quality Management District that under their air emission permit  
2 (facility # 22830) that they released between 5.2 tons – 9.4 tons of hazardous air pollutants from  
3 3250 Scott Blvd, including CO, NOX, SOX, organic gases, benzene, formaldehyde, isopropyl  
4 alcohol, toluene, diesel, arsenic, beryllium, cadmium, manganese, nickel, lead, and mercury.  
5 Gjovik believed that the employer was acting in violation of the CAA, and Gjovik’s belief was  
6 objectively reasonable. Apple was required to report CAA-regulated leaks to CalOES, but failed  
7 to do so repeatedly for 3250 Scott Blvd incidents.  
8

9 **C. COUNT III: APPLE VIOLATED RCRA 42 U.S.C. § 6971 AND 29 C.F.R. PART 24.**

10 120. The RESOURCE CONSERVATION AND RECOVERY ACT (“RCRA”) of 1976 and  
11 amendments, codified under 42 U.S.C. § 6901 et seq., governs the regulation of solid and  
12 hazardous wastes, and corrective actions to address improper waste management practices. The  
13 SOLID WASTE DISPOSAL ACT OF 1965 (“SWDA”) was the original Act, capturing congressional  
14 intent – however the Employee Protection provision was not added until the amendments that  
15 transformed the SWDA into the RCRA in 1976.  
16

17 121. The RCRA includes this Employee Protection provision at § 6971, and it mandates  
18 that:

19 (a) No person shall fire, or in any other way discriminate against, or cause to be fired  
20 or discriminated against, any employee or any authorized representative of employees  
21 by reason of the fact that such employee or representative has filed, instituted, or  
22 caused to be filed or instituted any proceeding under this Act or under any applicable  
23 implementation plan, or has testified or is about to testify in any proceeding resulting  
24 from the administration or enforcement of the provisions of this Act or of any  
25 applicable implementation plan.

26 122. The RCRA of 1976 gives U.S. EPA the authority to control hazardous waste from  
27 the “cradle-to-grave.” This includes the generation, transportation, treatment, storage, and disposal  
28 of hazardous waste. The RCRA also set forth a framework for the management of non-hazardous  
solid wastes. The 1986 amendments to the RCRA enabled U.S. EPA to address environmental

1 problems that could result from underground tanks storing petroleum and other hazardous  
2 substances. The Federal Hazardous and Solid Waste Amendments are the 1984 amendments to the  
3 RCRA that focused on waste minimization and phasing out land disposal of hazardous waste as  
4 well as corrective action for releases.

5  
6 123. Examples of RCRA-regulated chemicals on site at 3250 Scott Blvd include  
7 phosphine (P096), trichloroethylene (U228), toluene (U220), vinyl chloride (D043), xylene  
8 (U239), 1,1,1-Trichloroethane (U226), 1,2-dichloroethylene (U079), and 1,2-dichloroethane  
9 (U077).<sup>14</sup> Universal wastes (i.e., electronic wastes) are also considered hazardous wastes under  
10 RCRA Part 273.

11  
12 124. In 1992, California Department of Toxic Substances Control (“DTSC”) received  
13 authorization from the United States Environmental Protection Agency to implement the RCRA,  
14 Subtitle C requirements and the associated regulations. Receiving authorization from the U.S. EPA  
15 means that DTSC is the primary authority enforcing the RCRA hazardous waste requirements in  
16 California.<sup>15</sup>

17  
18 **Apple is a Covered Employer under RCRA 42 U.S.C. § 6971.**

19 125. Apple is an Employer and the Employer of Gjovik, and thus Apple is a “person” as  
20 referenced in § 6971 (“[n]o person...”). The U.S. Department of Labor’s jurisdiction over the  
21 Employer under this Employee Protection provision (§ 6971) is not related to the U.S. EPA’s  
22 jurisdiction over the Employer with respect to the subject matter of the RCRA (42 U.S.C. § 6901  
23 *et seq.*). Instead, once U.S. Department of Labor jurisdiction is established, part of the Complainant  
24 Employee’s burden is to prove their Protected Acts touched upon the purposes of the SWDA and  
25

26  
27 <sup>14</sup> US EPA, *List of Lists*, [https://www.epa.gov/system/files/documents/2022-12/List\\_of\\_Lists\\_Compiled\\_December%202022.pdf](https://www.epa.gov/system/files/documents/2022-12/List_of_Lists_Compiled_December%202022.pdf)

28 <sup>15</sup> CalEPA, DTSC, RCRA, <https://dtsc.ca.gov/resource-conservation-recovery-act-rcra/>; Hazardous Waste Control Law (Health and Safety Code, Division 20, Chapter 6.5, 22 CCR, Division 4.5).

1 the RCRA (§ 6901 *et seq.*) and that she reasonably believed there was a potential violation of the  
2 Act.<sup>16</sup>

3 **Gjovik Engaged in Protected Activity in furtherance of RCRA (42 U.S.C. § 6901 et**  
4 **seq.)**

5  
6 126. Gjovik engaged in activity projected under the RCRA when she complained to a  
7 supervisor and other employer personnel who can address potential environmental violations;  
8 when she complained to the EPA or a state or local government agency (US EPA, California EPA,  
9 California DEH, Santa Clara county EPA, Santa Clara city HazMat, Santa Clara city Fire  
10 Department) regarding potential environmental violations and/or issues related to the RCRA;  
11 provided information or assisting in an environmental inspection by the EPA or a state or local  
12 government agency; participated, assisted, testified, or prepared to do the former, in an  
13 investigation and/or proceeding related to the RCRA.  
14

15 **Gjovik’s Acts are Protected because they were Subjectively Reasonable**

16 127. Gjovik engaged in protected activity when she provided information “*grounded in*  
17 *conditions constituting reasonably perceived violations*” of the RCRA. Circumstances and  
18 evidence demonstrate Gjovik’s belief that violations of the RCRA were occurring. Gjovik  
19 provided information that “*related definitively and specifically*” to the subject matter of the RCRA.  
20

21 128. Gjovik’s concerns were validated and investigated by numerous government  
22 agencies who found real issues that required corrective actions. Gjovik’s disclosures led to  
23 additional people coming forward who were also impacted and witnesses similar RCRA-related  
24 illness and contamination.  
25

26 129. Gjovik’s TO-17 air testing conducted by a licensed industrial hygienist showed the  
27

28 <sup>16</sup> *Trueblood v Von Roll America Inc*, ALJ 2002-WPC-3 to 6, 2003-WPC-1, at page 38 (Mar. 26 2003);  
*Sasse v US Dept. of Justice*, ARB Case No. 99-053, ALJ Case No. 98-CAA-7 (August 31 2000).

1 presence of industrial chemicals which were also used and released at 3250 Scott Blvd. Gjovik  
2 also found toluene, xylenes, and arsine (which were also used and released at 3250 Scott Blvd) in  
3 the results of her medical blood and urine tests.

4 **Gjovik's Acts are Protected because they were Objectively Reasonable**

5  
6 130. Gjovik's Apple office at 825 Stewart Drive was registered under RCRA for  
7 hazardous waste generation and was repeatedly written up for hazardous waste management  
8 violations including on the day Gjovik was terminated. The same Apple EH&S manager was  
9 listed as the hazardous waste contact for 825 Stewart Drive and 3250 Scott Blvd. (T.H.).

10 131. Apple's factory at 3250 Scott Blvd is a registered RCRA TSDF (US EPA ID  
11 CAR000278176, CERS 10633816). The facility is registered for Aboveground Petroleum Storage,  
12 Hazardous Chemical Management, Chemical Storage Facilities, Hazardous Waste Generator,  
13 Hazardous Waste Onsite Treatment, and as a RCRA Large Quantity Hazardous Waste Generator.

14  
15 132. The facility was registered with a CERCLA required Risk Management Plan due  
16 to the storage and use of "extremely hazardous substances." The factory has multiple RCRA  
17 Permit-by-Rule permits for hazardous waste treatment operations (TTU and FTUs), including a  
18 9,203 gallon acid neutralization system. Apple also had "gas bunkers" and "evaporation systems."

19  
20 133. The facility also had a NPDES permit under the Clean Water Act for 40,000  
21 gallons/day of contaminated wastewater (permit SC-461B). The TSCA regulated chemical TCE  
22 showed up on regulatory sampling of the wastewater at least twice. The wastewater flowed in  
23 sewer lines that went under and around the apartments where Gjovik lived in 2020.

24  
25 134. At 3250 Scott Blvd, Apple was required to file biennial reports on the treatment,  
26 transportation, and disposal of hazardous waste and reported the offsite transport of around 700  
27 tons of hazardous waste a year for disposal. Apple's RCRA manifests included chemicals like

1 toluene, hexane, ferric chloride, and white phosphorus. Apple’s chemical inventory forms showed  
2 gases and chemicals including phosphine, silane, chlorine, and NMP. There were frequent repeated  
3 chemical leaks and spill including: phosphine, silane, and fluorine. Around April 2021, there may  
4 have also been a phosphine explosion at the factory.  
5

6 135. The facility was repeatedly cited for hazardous waste and health/safety violations  
7 including failure to keep proper hazardous waste records, failure to have required spill plans and  
8 spill training, inaccurate hazardous material inventory data, and failure to keep accurate records of  
9 hazardous waste treatment systems. One of Apple’s environmental contractors posted on his  
10 LinkedIn that while working at 3250 Scott Blvd in 2019-2020, he “*found cost savings for [his]*  
11 *client*” and “*c[a]me up with innovative methods for disposal of unique wastes.*” The RCRA  
12 recognizes the “*illegal dumping of hazardous substances*” into the air, whether accidental or  
13 deliberate, referring to the activity as a “*midnight dump.*”<sup>17</sup>  
14

15 **D. COUNT III: APPLE VIOLATED TSCA 15 U.S.C. § 2622 AND 29 C.F.R. PART 24.**

16 136. The TOXIC SUBSTANCES CONTROL ACT (“TSCA”) of 1976 and amendments,  
17 codified at 15 U.S.C. ch. 53, subch. I §§ 2601–2629, seeks to provides authorities to control the  
18 manufacture and sale of certain chemical substances. These requirements include testing of  
19 chemicals that are currently in commercial production or use, pre-market screening and regulatory  
20 tracking of new chemical products, and controlling unreasonable risks once a chemical substance  
21 is determined to have an adverse effect on health or the environment – including prohibiting certain  
22 uses or disposal methods of a chemical.  
23

24 137. The primary purpose of the TSCA is “*to assure that chemical substances and*  
25 *mixtures do not present unreasonable risks of injury to health or the environment.*” 15 U.S.C.  
26

27  
28 <sup>17</sup> US EPA, RCRA Orientation Manual 2014, Appendix C: Glossary, pg C-8

1 2601(b)(3). The TSCA includes an Employee Protection provision at 15 U.S.C. § 2622 which  
2 mandates that:

3 (a) In general. No employer may discharge any employee or otherwise discriminate  
4 against any employee with respect to the employee's compensation, terms, conditions,  
5 or privileges of employment because the employee (or any person acting pursuant to  
6 a request of the employee) has- (1) commenced, caused to be commenced, or is about  
7 to commence or cause to be commenced a proceeding under this Act; (2) testified or  
8 is about to testify in any such proceeding; or (3) assisted or participated or is about to  
9 assist or participate in any manner in such a proceeding or in any other action to carry  
10 out the purposes of this Act.

11 138. The TSCA provides U.S. EPA with authority to require reporting, record-keeping  
12 and testing requirements, and restrictions relating to chemical substances and/or mixtures. The  
13 TSCA addresses the production, importation, use, and disposal of specific chemicals. The  
14 legislative history of the TSCA provides further insight into the concern among supporters of the  
15 legislation regarding the lack of knowledge available to government agencies, consumers of  
16 chemical products and the public at large with regard to the potentially adverse effects of some  
17 chemical substances. The TSCA legislative history also demonstrates a parallel concern about the  
18 failure of chemical manufacturers, processors and distributors to develop and disseminate  
19 information regarding the risk posed by exposure to particular chemical substances. *Melendez v.*  
20 *Exxon Chemicals Americas*, ARB No. 96-051, ALJ No. 1993-ERA-6 (ARB July 14, 2000).

21 **Apple is a Covered Employer under TSCA 15 U.S.C. § 2622.**

22 139. Apple is an Employer, and the Employer of Gjovik, and thus Apple is a “employer”  
23 as referenced in § 2622 (“[n]o employer...”). The U.S. Department of Labor’s jurisdiction over  
24 the Employer under this Employee Protection provision (§ 2622) is not related to the U.S. EPA’s  
25 jurisdiction over the Employer with respect to the subject matter of the TSCA (42 U.S.C. § 9601  
26 *et seq.*). Instead, once U.S. Department of Labor jurisdiction is established, part of the Complainant  
27 Employee’s burden is to prove their Protected Acts touched upon the purposes of the TSCA (15  
28

1 U.S.C. ch. 53, subch. I §§ 2601–2629) and that she reasonably believed there was a potential  
2 violation of the Act.<sup>18</sup>

3 **Gjovik Engaged in Protected Activity in furtherance of TSCA 15 U.S.C. ch. 53,**  
4 **subch. I.**

5 140. Gjovik engaged in activity projected under the TSCA when she complained to a  
6 supervisor and other employer personnel who can address potential environmental violations;  
7 when she complained to the EPA or a state or local government agency regarding potential  
8 environmental violations and/or issues related to the TSCA; provided information or assisting in  
9 an environmental inspection by the EPA or a state or local government agency; and participated,  
10 assisted, testified, or prepared to do the former, in an investigation and/or proceeding related to the  
11 TSCA.  
12

13  
14 **Gjovik’s Acts are Protected because they were Subjectively Reasonable.**

15 141. Gjovik engaged in protected activity when she provided information “grounded in  
16 conditions constituting reasonably perceived violations” of the TSCA. Circumstances and  
17 evidence demonstrate Gjovik’s belief that violations of the TSCA were occurring. Gjovik provided  
18 information that “related definitively and specifically” to the subject matter of the TSCA. Gjovik  
19 was concerned about the health/safety risks of an emission of toxic substance. *Jones v. EG & G*  
20 *Defense Materials, Inc.*, 1995-CAA-3 (ARB Sept. 29, 1998).  
21

22 142. Prohibited acts under the TSCA including failure or refusal to establish or maintain  
23 records, submit reports, notices, or other information, or permit access to or copying of records, as  
24 required by this chapter or a rule thereunder. 15 U.S. Code § 2614. Gjovik repeatedly asked for  
25 access to reports and information, and complained about accuracy of records and reports, related  
26

27 \_\_\_\_\_  
28 <sup>18</sup> *Trueblood v Von Roll America Inc*, ALJ 2002-WPC-3 to 6, 2003-WPC-1, at page 38 (Mar. 26 2003);  
*Sasse v US Dept. of Justice*, ARB Case No. 99-053, ALJ Case No. 98-CAA-7 (August 31 2000).

1 to dangerous chemicals at 825 Stewart Drive and 3250 Scott Blvd.

2 143. The exposure to TSCA chemicals at 3250 Scott Blvd affected residents and the  
3 public, as well as the environment (including air, soil, groundwater, and the next-door San Tomas  
4 Aquino Creek which flows to the San Francisco Bay). The exposure to TSCA chemicals at 825  
5 Stewart Drive affected employees but also contractors, government employees, job applicants,  
6 consultants, and other visitors.  
7

8 **Gjovik's Acts are Protected because they were Objectively Reasonable.**

9 144. In 2023, US EPA proposed under TSCA to ban the manufacture, processing, and  
10 distribution in commerce of TCE for all uses, with longer compliance timeframes and workplace  
11 controls for some processing and industrial and commercial uses until the prohibitions come into  
12 effect. The rule would protect consumers, workers, occupational non-users and bystanders from  
13 the harmful health effects of TCE.<sup>19</sup> Gjovik was exposed to TCE through the HVAC system at 825  
14 Stewart Drive for over four years.  
15

16 145. In 2022, US EPA proposed a partial ban on the manufacture, processing, and  
17 distribution in commerce of N-Methyl-2-pyrrolidone (NMP). Apple used NMP at 3250 Scott Blvd,  
18 reported onsite treatment and onsite disposal into the air in 2020 (TRI filing under  
19 95051NTRSL3250S), and Gjovik had reported yellow discoloration of her fabrics and yellow  
20 slime in her bathroom (and NMP turns yellow when it oxidizes). Other victims also reported  
21 mysterious yellow slime in their apartments. Apple reported to the US EPA that at least 2,341  
22 pounds of NMP were treated on site and at least 261 pounds were released into the ambient air.  
23 NMP is not supposed to be released into the environment and a spill of NMP is supposed to require  
24 a downwind evacuation of at least 1,000 feet. The apartments and a playground were 273 ft away.  
25  
26

27 \_\_\_\_\_  
28 <sup>19</sup> US EPA: *TSCA: TCE*, October 2023, <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-trichloroethylene-tce>

**VIII. ADVERSE ACTIONS**

1  
2 146. Apple, Gjovik’s employer, did discharge or otherwise retaliate against Gjovik with  
3 respect to Gjovik’s compensation, terms, conditions, or privileges of employment because Gjovik,  
4 or any person acting pursuant to Gjovik’s request, commenced/caused to be commenced/is about  
5 to commence a proceeding under CERCLA, RCRA, Clean Air Act, and TSCA for the  
6 administration or enforcement of requirements under each statute; and testified/is about to testify  
7 in proceedings; and assisted/participated/is about to assist or participate in a proceeding and other  
8 actions to carry out the purposes of the CERCLA, RCRA, Clean Air Act, and TSCA statutes.  
9 Because of Gjovik’s actions noted, Apple did intimidate, threaten, restrain, coerce, blacklist,  
10 discharge, discipline, and in other manners retaliate against Gjovik. 29 C.F.R. § 24.102(b)

11  
12 147. Apple subjected Gjovik to discrete Adverse Actions including harassment and  
13 intimidation, constructive termination/hostile work environment, suspension/administrative leave  
14 (the 9th Circuit recognizes a claim for paid administrative leave as an adverse action in certain  
15 circumstances), threats of the prior actions, and termination of employment. Apple’s actions were  
16 motivated by its forbidden animus towards Gjovik over her protected environmental actions.  
17

18 148. Apple’s proffered supposed legitimate reason for its termination of Gjovik was  
19 unlawful itself (and is charged as such in the civil lawsuit). Further, the justifications and  
20 surrounding circumstances of the suspension, constructive termination and termination were not  
21 reasonable, were not logical, the response was not proportional, the tone and nature of the  
22 discipline was not normal, it deviated from common expected practices and company policies, it  
23 was arbitrary and capricious, and it was not substantiated. Apple first claimed on Sept. 9 it was  
24 about Twitter posts, but by Sept. 15 said it was about Twitter and also a news interview; Apple  
25 claimed on Sept. 9 that Gjovik sent redacted documents to Employee Relations, but she did not so  
26 they must have been spying on her Twitter posts (which were redacted) and got confused, thus  
27  
28

1 they never brought it up after that day.

2 149. There is motive to retaliate and evidence of animus, there have been contradictory  
3 and conflicting evidence and statements from Respondent about the matter, Apple’s actions did  
4 not align with the justification, and Apple did not fire or discipline other employees for engaging  
5 in the same conduct. The adverse actions occurred quickly after the protected activities, and the  
6 timing of many events was suspicious and showed hostility towards the protected acts.  
7

8 150. Apple had direct knowledge of much of Gjovik’s protected activity, but for  
9 everything else, knowledge may be imputed by Gjovik’s widely publicized claims prior to her  
10 termination, similar to *Ruud v. Westinghouse Hanford Co.*, 88-ERA-33 (ALJ Mar. 15, 1996).  
11

12 **IX. DEMAND FOR RELIEF**

13 151. Here, if the court concludes that Apple Inc has violated the law, under Title 29,  
14 Subtitle A, 24.109(d)(1), the ALJ may direct Apple to take appropriate affirmative action to abate  
15 the violation, including reinstatement of the complainant to her former position, together with the  
16 compensation (including back pay), terms, conditions, and privileges of that employment, and  
17 compensatory damages.  
18

19 152. Apple’s retaliation against Gjovik caused Gjovik to lose pay, benefits, stock  
20 options, restricted stock units, 401K savings, future earnings; to accrue credit card and student loan  
21 debt; damaged credit score; caused Gjovik to liquidate and spend all her savings; to be unable to  
22 work in prior profession and denylisted from most companies. The one comparably paying job  
23 Gjovik was able to obtain during that time was short-lived as Apple’s lawyers directly demanded  
24 the employer terminate its relationship with Gjovik and the law firm did terminate the relationship  
25 due to Apple’s demands. (This is currently an issue in the prevailing law firm’s pending request  
26 for attorney’s fees in that class action lawsuit, with Apple claiming to not know who Gjovik is...).  
27  
28

1           153. Apple’s retaliation also caused Gjovik lost vacation paid time off and forsaking any  
2 opportunity for vacations or pleasure in order to manage the litigation; future career prospects  
3 severely diminished due to the allegations against her; reputational harm; cost to Gjovik in legal  
4 fees and attorneys fees for herself; and Apple’s conduct caused Gjovik severe distress and injury.  
5 Further, Apple severely physically injured Gjovik with its CERCLA, RCRA, and CAA violations  
6 and likely increased Gjovik’s lifetime risk for cancer and other diseases, taking years off of her  
7 life expectancy.  
8

9           154. Gjovik also suffered other pecuniary and non-pecuniary harm such as mental  
10 suffering, medical issues, moving costs, job search costs, loss of reputation, and loss of consortium.  
11 In addition to the fiscal harm, Apple’s conduct left Gjovik with “*discomfort, worry, anxiety, upset*  
12 *stomach, concern, and agitation.*” As a direct and proximate result of Apple’s conduct, Gjovik  
13 also experienced overwhelming anguish, illness, “*shock, horror, nausea, fright, grief, shame,*  
14 *humiliation, embarrassment, anger, chagrin, disappointment...*” Apple’s conduct resulted in Post-  
15 Traumatic Stress Disorder, depression, panic, and anxiety symptoms. Gjovik grappled with  
16 depersonalization and derealization.  
17

18           155. Under CERCLA, Gjovik prays for ‘make whole’ compensatory relief including  
19 payment of back pay with interest, compensation for special damages including attorneys’ fees,  
20 job search expenses, out of pocket medical expenses, and other expenses, compensation for non-  
21 pecuniary injuries including mental injury and loss of reputation, job search expenses, out of  
22 pocket medical expenses, posting of notices, expungement of Gjovik’s record, and either  
23 reinstatement or front pay.  
24

25           156. 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  
28

1 attorneys' fees, job search expenses, out of pocket medical expenses, and other expenses,  
2 compensation for non-pecuniary injuries including mental injury and loss of reputation, job search  
3 expenses, out of pocket medical expenses, posting of notices, expungement of Gjovik's record,  
4 and either reinstatement or front pay.

5  
6 157. Under the RCRA, Gjovik prays for 'make whole' compensatory relief including  
7 payment of back pay with interest, compensation for special damages including attorneys' fees,  
8 job search expenses, out of pocket medical expenses, and other expenses, compensation for non-  
9 pecuniary injuries including mental injury and loss of reputation, job search expenses, out of  
10 pocket medical expenses, posting of notices, expungement of Gjovik's record, and either  
11 reinstatement or front pay.

12  
13 158. Under the TSCA, Gjovik prays for 'make whole' compensatory relief including  
14 payment of back pay with interest, compensation for special damages including attorneys' fees,  
15 job search expenses, out of pocket medical expenses, and other expenses, and compensation for  
16 non-pecuniary injuries including mental injury and loss of reputation, posting of notices,  
17 expungement of Gjovik's record, and either reinstatement or front pay.

18  
19 159. Under the TSCA, Gjovik also requests exemplary damages. Apple demonstrated  
20 "*reckless or callous indifference to the legally protected rights of others*" and engaged in  
21 "*conscious disregard of those rights.*" There is no concern about Apple being unable to pay such  
22 damages. In only 2023, Apple claimed net sales of \$383.3 billion and net income of \$97.0 billion.

23 160. Under all statutes, Gjovik also requests expungement of all warnings, reprimands,  
24 or derogatory references resulting from the protected activity that have been placed in the  
25 Complainant's personnel file or other records; and Respondent's agreement to provide a neutral  
26 reference to potential employers of the complainant.  
27  
28

