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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ASHLEY M GJOVIK,
Plaintiff,

v.

APPLE INC.,
Defendant.

Case No. 23-cv-04597-EMC

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT’S MOTION TO DISMISS; DENYING DEFENDANT’S MOTION TO STRIKE; AND GRANTING PLAINTIFF’S MOTION TO STRIKE

Docket Nos. 48, 49, 64

Plaintiff Ashley Gjovik, proceeding pro se,¹ is a former employee of Defendant Apple, Inc. She started to work for Apple in 2015 and was terminated in September 2021. About two years after she was fired, she initiated this lawsuit. Ms. Gjovik has asserted fifteen different claims against Apple, both federal and state. The gist of her suit is that Apple retaliated against her because she complained about conduct at the company, including but not limited to environmentally unsafe conditions.

Now pending before the Court are several motions. The primary motions are two motions filed by Apple: (1) a motion to dismiss the operative third amended complaint (“TAC”) and (2) a related motion to strike. In addition to Apple’s motions, there is a motion that Ms. Gjovik has filed. Specifically, Ms. Gjovik has moved to strike two declarations that were filed by an ex-Apple employee, Cher S. Scarlett, whom Ms. Gjovik has referred to in the TAC as “Joanna Appleseed.” See Docket No. 62 (Scarlett Decl.); Docket No. 66 (Supp. Scarlett Decl.).

United States District Court
Northern District of California

1 Having considered the parties’ briefs, as well as the oral argument presented at the hearing
2 on May 16, 2024, the Court hereby **GRANTS** in part and **DENIES** in part Apple’s motion to
3 dismiss; **DENIES** Apple’s motion to strike; and **GRANTS** Ms. Gjovik’s motion to strike.

4 **I. FACTUAL & PROCEDURAL BACKGROUND**

5 The operative pleading is the third amended complaint (“TAC”). Although the TAC is
6 difficult to follow at times, the main categories of misconduct as described in the TAC are as
7 follows:

- 8 (1) During her employment with Apple, Ms. Gjovik lived in an apartment near an
9 Apple factory (known as the ARIA factory) and became ill because the factory
10 released toxic substances into the environment.
- 11 (2) Ms. Gjovik’s office at Apple (known as Stewart 1) was located on a contaminated
12 site subject to EPA regulation, *i.e.*, a Superfund site, and she became ill because of
13 Apple’s actions/omissions related to the site.
- 14 (3) Apple made employees, including Ms. Gjovik, participate in studies related to
15 Apple products that were invasive to their privacy.
- 16 (4) Apple retaliated against Ms. Gjovik for making complaints about harassment and
17 environmental safety. Ms. Gjovik’s complaints included internal complaints,
18 complaints to governmental agencies, complaints to the press, and complaints made
19 in social media. The retaliation by Apple included but was not limited to the
20 termination of Ms. Gjovik from employment.

21 Below, the Court provides more details regarding Apple’s alleged misconduct and Ms.
22 Gjovik’s termination from employment. To be clear, the discussion below is based on the
23 allegations made in the TAC.

24 A. Harassment at Work

25 In February 2015, Ms. Gjovik began to work for Apple. She started out as an Engineering
26 Project Manager in Software Engineering and continued to work in that office until January 2017.
27 See TAC ¶ 13. During her time in that office, she was harassed, primarily by two male co-

28 workers. See TAC ¶ 13. In addition, during her time in the office, she investigated a trend of



1 battery failures in the field. When she did not comply with her managers' directive to ignore the
2 problem, she was essentially forced out of that office. *See* TAC ¶ 17.

3 In January 2017, she left Software Engineering and joined Hardware Engineering as a
4 Senior Engineering Project Manager. *See* TAC ¶ 18. There, she was harassed by two of her
5 superiors, including on the basis of her sex and disability. *See* TAC ¶ 18. As indicated below,
6 Ms. Gjovik became disabled because of Apple's release of toxic substances into the environment.

7 **B. Chemical Exposure from the Apple ARIA Factory**

8 In February 2020, while she was still working for Apple, Ms. Gjovik moved into an
9 apartment building located at 3255 Scott Blvd. in Santa Clara. *See* TAC ¶ 25. There was an
10 Apple factory located less than 300 feet away at 3250 Scott Blvd. *See* TAC ¶ 22. The factory had
11 the code name "ARIA" and was used for semiconductor fabrication. *See* TAC ¶ 22. "Apple
12 intentionally vented its fabrication exhaust – . . . consisting of toxic solvent vapors, gases, and
13 fumes – into the ambient outdoor air." TAC ¶ 22.

14 Because of Apple's release of toxic substances into the air, Ms. Gjovik became "severely
15 ill," *i.e.*, because she was living in the apartment near the Apple ARIA factory. TAC ¶ 25. Ms.
16 Gjovik suffered "severe fainting spells, dizziness, chest pain, palpitations, stomach aches,
17 exhaustion fatigue, . . . strange sensations in her muscle and skin," a slow heart rate, volatile blood
18 pression, and arrhythmia. TAC ¶ 25. At some point, she became so sick that she went on
19 disability. *See* TAC ¶ 26.

20 From February through September 2020, Ms. Gjovik sought medical treatment, including
21 at a medical clinic sponsored by Apple, known as AC Wellness. *See* TAC ¶¶ 25-26. In or about
22 September 2020, she consulted with "multiple occupational and environmental exposure doctors,
23 who told [her] that all of her symptoms were consistent with solvent and other chemical
24 exposures." TAC ¶ 29. Ms. Gjovik hired an industrial hygienist to test the indoor air at her
25 apartment, and the results showed a number of chemicals which were "in use by Apple at ARIA."
26 TAC ¶ 30. (At that time, Ms. Gjovik knew that there was an Apple facility near her apartment, *see*
27 TAC ¶ 32, but it appears she did not know about the semiconductor fabrication at the factory until

1 Subsequently, from September 2020 through April 2021, Ms. Gjovik contacted various
2 governmental agencies about the problem, including the EPA and California EPA. *See* TAC ¶¶
3 29, 36.

4 In March 2021, Ms. Gjovik wrote an article, which was published in the SF Bay View
5 newspaper, about her chemical exposure experience with the air around her apartment. This led to
6 other victims coming forward, including other Apple employees. *See* TAC ¶¶ 33-34.

7 In April 2021, Ms. Gjovik met with several local, state, and federal politicians “about what
8 occurred to her next to ARIA.” TAC ¶ 36.

9 In July and August 2021, Ms. Gjovik continued to meet with local, state, and federal
10 politicians. *See* TAC ¶ 38.

11 As discussed in more detail, *infra*, in September 2021, Apple terminated Ms. Gjovik.

12 Not until some two years later, in February 2023, did Ms. Gjovik learn that there was
13 semiconductor fabrication taking place at the Apple ARIA factory. *See* TAC ¶ 39.

14 In June 2023, Ms. Gjovik filed a complaint about the ARIA factory with the EPA and
15 California EPA. The EPA inspected in August 2023 and January 2024. Ms. Gjovik is still
16 waiting for the results of the investigation. *See* TAC ¶ 40.

17 C. Chemical Exposure from the Apple Stewart 1 Office

18 From about 2017 to the date of her termination (in September 2021), Ms. Gjovik worked at
19 an Apple office located at 825 Stewart Dr. in Sunnyvale. The office was known as “Stewart 1.” It
20 was located on a Superfund site (*i.e.*, a contaminated site regulated by the EPA). The
21 contamination was in the groundwater and came about due to a semiconductor fabrication facility
22 that used to be on the site. *See* TAC ¶¶ 41-42. It appears that the Northrop Grumman used to
23 operate on the site. *See* TAC ¶ 43.

24 Apple became a tenant on the site in 2015. *See* TAC ¶ 45. In late 2015, after it became a
25 tenant, Apple installed a new HVAC system in the building. As a part of the installation, Apple
26 sawed off vent stacks on the main building roof; these stacks had been put in place as part of the
27 ventilation of the area beneath the concrete slab foundation, *i.e.*, to allow hazardous waste vapors

1 foot), it then put the HVAC system in close proximity to the stacks, so that the discharge from the
2 stacks could be taken in by the intake of the HVAC system. *See* TAC ¶¶ 44-46. Apple did vapor
3 intrusion testing in December 2015, and the results showed an increase in indoor air pollution
4 (compared to a test that Northrop Grumman had conducted back in May 2015). Nevertheless,
5 Apple had its employees move into the building. *See* TAC ¶ 47.

6 In March 2021, Apple informed Ms. Gjovik and others that it would be conducting vapor
7 intrusion testing for Stewart 1. *See* TAC ¶ 49. Ms. Gjovik expressed concern to her superiors
8 because the office was on the Superfund site, and she shared that fact with her coworkers. *See*
9 TAC ¶¶ 49, 51. She also met subsequently (on more than one occasion) with Apple’s
10 Environmental Health & Safety (“EH&S”) office. *See* TAC ¶ 52.

11 In April 2021, Ms. Gjovik contacted the EPA about the Superfund site and continued to
12 communicate with the agency through August 2021. *See* TAC ¶ 52.

13 In June 2021, Apple’s EH&S office and its Employee Relations office notified Ms. Gjovik
14 that the foundation of Stewart 1 was cracked, that the foundation would need to be repaired, and
15 that air testing would be conducted thereafter. *See* TAC ¶ 53. Apple refused to contact the EPA;
16 therefore, Ms. Gjovik reported Apple to the EPA herself (and told Apple that she had done so).
17 *See* TAC ¶ 53.

18 By the end of July 2021, Ms. Gjovik made open complaints about Apple’s conduct at
19 Stewart 1 to various people: coworkers, the press, and social media. *See* TAC ¶ 59.

20 In response, Apple retaliated against Ms. Gjovik. For example:

- 21 • In or about July 2021, Apple issued “gag orders” to Ms. Gjovik, *e.g.*, to prevent her
22 from communicating about safety concerns to her coworkers. *See* TAC ¶ 55; *see*
23 *also* TAC ¶ 60 (alleging that an Apple investigator “interrogated” her about
24 communications with coworkers).
- 25 • In or about July 2021, Apple opened what Mr. Gjovik seems to allege as an
26 investigation into sexism by Ms. Gjovik’s superiors. There was in fact no real
27 investigation; rather Ms. Gjovik’s superiors were simply told that she was

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