

1 JESSICA R. PERRY (SBN 209321)
jerry@orrick.com
2 MELINDA S. RIECHERT (SBN 65504)
mrieghert@orrick.com
3 ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
4 Menlo Park, CA 94025-1015
Telephone: +1 650 614 7400
5 Facsimile: +1 650 614 7401

6 KATHRYN G. MANTOAN (SBN 239649)
7 kmantoan@orrick.com
8 ORRICK, HERRINGTON & SUTCLIFFE LLP
9 The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669
Telephone: +1 415 773 5700
Facsimile: +1 415 773 5759

10 Attorneys for Defendant Apple Inc.

[Additional counsel on following page]

17 || ASHLEY GJOVIK

18 Plaintiff,

19 || v.

20 | APPLE INC

21 || Defendant

Case No. 23-cv-4597-EMC

**DEFENDANT APPLE INC.'S
OPPOSITION TO PLAINTIFF'S
MOTION TO STRIKE AND DISMISS
AFFIRMATIVE DEFENSES**

Date: June 12, 2025
Time: 10:30 AM PST
Dept: Courtroom 5, 17th Floor
Judge: Honorable Edward M. Chen

1 RYAN D. BOOMS (SBN 329430)
2 rbooms@orrick.com
3 ORRICK, HERRINGTON & SUTCLIFFE LLP
4 1152 15th Street, N.W.
5 Washington, D.C. 20005-1706
6 Telephone: +1 202 339 8400
7 Facsimile: +1 202 339 8500

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12 Attorneys for Defendant Apple Inc.

TABLE OF CONTENTS

| | Page | |
|------|---|----|
| I. | INTRODUCTION | 1 |
| II. | LEGAL STANDARD..... | 1 |
| III. | ARGUMENT | 3 |
| | A. Plaintiff's Motion Should Be Denied for Violating Rule 11..... | 3 |
| | 1. Citing Cases That Do Not Exist (at Least 9 Instances)..... | 4 |
| | 2. Citing Quotes That Do Not Exist (at Least 3 Instances)..... | 6 |
| | 3. Plainly Misrepresenting Case Holdings (at Least 11 Instances)..... | 7 |
| | B. Plaintiff's Attacks on Apple's Affirmative Defenses Fail..... | 10 |
| | 1. Plaintiff's Arguments That Certain Defenses Are Legally Invalid (as Well as Insufficiently Pled) Fail..... | 11 |
| | a. First Affirmative Defense: Failure to State a Claim | 11 |
| | b. Fourth, Eleventh, and Fourteenth Affirmative Defenses: At-Will, Good Faith, and Business Judgment..... | 12 |
| | c. Seventh Affirmative Defense: Offset to Prevent Double Recovery | 14 |
| | d. Twelfth Affirmative Defense: Statute of Limitations | 15 |
| | e. Fifteenth Affirmative Defense: Workers' Compensation Exclusivity | 16 |
| | 2. Plaintiff's Attacks on Admittedly Valid Defenses Also Fail..... | 16 |
| | a. Second, Third, Eighth, Ninth, and Tenth Affirmative Defenses: Defenses Arising From Plaintiff's Unauthorized Disclosure of Apple's Confidential Information..... | 17 |
| | b. Fifth Affirmative Defense: Consent | 17 |
| | c. Sixth Affirmative Defense: Failure to Mitigate | 18 |
| | d. Thirteenth Affirmative Defense: Constitutional Limits on Punitive Damages..... | 18 |
| | C. The Challenged Statements That Are Not Affirmative Defenses Are Also Appropriate. | 18 |
| | 1. Apple's Reservation of Rights Was Proper. | 18 |
| | 2. References in Apple's Answer to Government Actions Not Having "Preclusive Effect" in This Litigation Are Appropriate Given Plaintiff's Allegations. | 19 |
| | D. Apple's Prayer for Relief Is Proper..... | 20 |
| IV. | CONCLUSION..... | 21 |

1 TABLE OF AUTHORITIES
23 **Page(s)**4 **Federal Cases**

| 5 | <i>Adams Fruit Co. v. Barrett</i> , 494 U.S. 638 (1990)..... | 16 | |
|----|---|---------------|--|
| 6 | <i>Barnes v. AT & T Pension Ben. Plan-Nonbargained Program</i> , 718 F. Supp. 2d 1167 (N.D. Cal. 2010) | 2, 6, 19 | |
| 7 | <i>Clark v. State Farm Mut. Auto. Ins. Co.</i> , 231 F.R.D. 405 (C.D. Cal. 2005) | 9 | |
| 8 | <i>Cruz v. MRC Receivables Corp.</i> , 563 F. Supp. 2d 1092 (N.D. Cal. 2008) | 8, 9 | |
| 9 | <i>Dehghani v. Castro</i> , No. 2:25-CV-0052 MIS-DLM, 2025 WL 988009 (D.N.M. Apr. 2, 2025)..... | 10 | |
| 10 | <i>DeLeon v. Wells Fargo Bank, N.A.</i> , 729 F. Supp. 2d 1119 (N.D. Cal. 2010) | 5 | |
| 11 | <i>DeLeon v. Wells Fargo Bank, N.A.</i> , No. 10-CV-01390-LHK, 2010 WL 4285006 (N.D. Cal. Oct. 22, 2010) | 6 | |
| 12 | <i>DeLeon v. Wells Fargo Bank, N.A.</i> , No. 10-CV-01390-LHK, 2011 WL 311376 (N.D. Cal. Jan. 28, 2011) | 6 | |
| 13 | <i>Deschaine v. St. Joseph Health System</i> , No. CIV. 2:13-1991WBSCKD, 2013 WL 6054456 (N.D. Cal. Nov. 15, 2013)..... | 8 | |
| 14 | <i>E.E.O.C. v. BNSF Railway Co.</i> , 902 F.3d 916 (9th Cir. 2018)..... | 9 | |
| 15 | <i>E.E.O.C. v. Midwest Reg'l Med. Ctr., LLC</i> , No. CIV-13-789-M, 2014 WL 1745081 (W.D. Okla. Apr. 30, 2014)..... | 5 | |
| 16 | <i>E.E.O.C. v. Total Sys. Servs., Inc.</i> , 221 F.3d 1171 (11th Cir. 2000) | 13 | |
| 17 | <i>G&G Closed Circuit Events, LLC v. Nguyen</i> , No. 10-CV-00168-LHK2010 WL 3749284 (N.D. Cal. Sept. 23, 2010)..... | 9 | |
| 18 | <i>Ganley v. Cnty. of San Mateo</i> , No. C06-3923 TEH, 2007 WL 902551 (N.D. Cal. Mar. 22, 2007) | 2 | |
| 19 | <i>Garcia v. Salvation Army</i> , 918 F.3d 997 (9th Cir. 2019)..... | <i>passim</i> | |

| | | |
|----|---|---------------|
| 1 | <i>Haddad v. Lockheed Cal. Corp.</i> , 720 F.2d 1454 (9th Cir. 1983)..... | 8 |
| 2 | | |
| 3 | <i>Izett v. Crown Asset Mgmt., LLC</i> , No. 18-CV-05224-EMC, 2018 WL 6592442 (N.D. Cal. Dec. 14, 2018)..... | <i>passim</i> |
| 4 | | |
| 5 | <i>Kohler v. Flava Enterprises</i> , 779 F.3d 1016 (9th Cir. 2015)..... | 7 |
| 6 | | |
| 7 | <i>Kohler v. Islands Restaurants, LP</i> , 280 F.R.D. 560 (S.D. Cal. 2012)..... | 2, 6, 7, 12 |
| 8 | | |
| 9 | <i>Kruglyak v. Home Depot U.S.A., Inc.</i> , No. 1:22CV00024, 2025 WL 900621 (W.D. Va. Mar. 25, 2025) | 3 |
| 10 | | |
| 11 | <i>Mata v. Avianca, Inc.</i> , 678 F. Supp. 3d 443 (S.D.N.Y. 2023)..... | 3, 10 |
| 12 | | |
| 13 | <i>Mendoza v. Nordstrom, Inc.</i> , 778 F.3d 834 (9th Cir. 2015)..... | 4 |
| 14 | | |
| 15 | <i>Mendoza v. Nordstrom, Inc.</i> , No. SACV1000109CJCMGLX, 2012 WL 12950481 (C.D. Cal. Nov. 5, 2012)..... | 4 |
| 16 | | |
| 17 | <i>Murillo v. Pac. Gas & Elec. Co.</i> , No. 2:08-1974 WBS GGH, 2010 WL 2889728 (E.D. Cal. July 21, 2010)..... | 5 |
| 18 | | |
| 19 | <i>Nurse v. United States</i> , 226 F.3d 996 (9th Cir. 2000)..... | 2 |
| 20 | | |
| 21 | <i>Perez v. Gordon & Wong Law Grp., P.C.</i> , No. 11-03323-LHK, 2012 WL 1029425 (N.D. Cal. Mar. 26, 2012) | 8, 9 |
| 22 | | |
| 23 | <i>Rivera v. Peri & Sons Farms, Inc.</i> , 735 F.3d 892 (9th Cir. 2013)..... | 8 |
| 24 | | |
| 25 | <i>Sanchez v. Master Prot., LP</i> , No. CV208472PSGRAOX, 2022 WL 2104519 (C.D. Cal. May 6, 2022) | 14 |
| 26 | | |
| 27 | <i>Sanders v. United States</i> , No. 24-CV-1301, 2025 WL 957666 (Fed. Cl. Mar. 31, 2025) | 10 |
| 28 | | |
| | <i>Solis v. Zenith Cap., LLC</i> , No. C 08-4854 PJH, 2009 WL 1324051 (N.D. Cal. May 8, 2009) | 1, 2 |
| | | |
| | <i>Thomas v. Pangburn</i> , No. CV423-046, 2023 WL 9425765 (S.D. Ga. Oct. 6, 2023)..... | 10 |
| | | |
| | <i>Wadsworth v. Walmart Inc.</i> , No. 2:23-CV-118-KHR, 2025 WL 608073 (D. Wyo. Feb. 24, 2025) | 10 |

1 *Wyshak v. City Nat. Bank,*
 2 607 F.2d 824 (9th Cir. 1979)..... 15

3 **State Cases**

4 *Cabesuela v. Browning-Ferris Industries of Cal., Inc.,*
 5 68 Cal. App. 4th 101 (1998)..... 16

6 *Doe v. Roman Catholic Archbishop of Cashel & Emly,*
 7 177 Cal. App. 4th 209 (2009)..... 6

8 *E.H. v. State,*
 9 No. 2D17-4093, 2018 WL 3130993 (Fla. Dist. Ct. App. June 27, 2018)..... 6

10 *Guz v. Bechtel Nat'l Inc.,*
 11 24 Cal. 4th 317 (2000) 12

12 *Harris v. City of Santa Monica,*
 13 56 Cal. 4th 203 (2013) 12

14 *Martinez v. Rite Aid Corp.,*
 15 63 Cal. App. 5th 958 (2021)..... 14

16 *McGrory v. Applied Signal Tech., Inc.,*
 17 212 Cal. App. 4th 1510 (2013)..... 13

18 *Miklosy v. Regents of Univ. of California,*
 19 44 Cal. 4th 876 (2008) 16

20 *Prue v. Brady Co./San Diego,*
 21 242 Cal. App. 4th 1367 (2015)..... 15

22 *Shoemaker v. Myers,*
 23 52 Cal. 3d 1 (1990) 16

24 *Witt v. Jackson,*
 25 57 Cal. 2d 57 (1961) 14

26 **Federal Rules**

27 Fed. R. Civ. P. 11 *passim*

28 Fed. R. Civ. P. 7(a)..... 11

29 Fed. R. Civ. P. 8 6, 11, 12

30 Fed. R. Civ. P. 12(b) 11, 12

31 Fed. R. Civ. P. 12(e)..... 1

| | | |
|----|-------------------------------------|-----------------|
| 1 | Fed. R. Civ. P. 12(f) | 1, 2, 6, 18, 19 |
| 2 | Fed. R. Civ. P. 12(h)(2)..... | 11, 19 |
| 3 | Statutes | |
| 4 | Cal. Civ. Proc. Code § 335.1..... | 15 |
| 5 | Cal. Civ. Proc. Code § 338(a) | 15 |
| 6 | Cal. Civ. Proc. Code § 340(a) | 15, 16 |
| 7 | Cal. Labor Code § 98.6 | 15, 16 |
| 8 | Cal. Labor Code § 1102.5 | 13, 15, 16 |
| 9 | Cal. Labor Code § 1102.6 | 13 |
| 10 | Cal. Labor Code § 6310 | 15 |
| 11 | | |
| 12 | | |
| 13 | | |
| 14 | | |
| 15 | | |
| 16 | | |
| 17 | | |
| 18 | | |
| 19 | | |
| 20 | | |
| 21 | | |
| 22 | | |
| 23 | | |
| 24 | | |
| 25 | | |
| 26 | | |
| 27 | | |
| 28 | | |

1 **I. INTRODUCTION**

2 Plaintiff's Motion to Strike portions of Apple's Answer should be rejected. Plaintiff asks
 3 this Court for an order striking *every single one* of Apple's affirmative defenses, as well as its entire
 4 prayer for relief and select other statements in Apple's Answer that she finds objectionable. While
 5 Plaintiff's meanderings and unsupported legal positions are at many times difficult to follow, her
 6 Motion boils down to four basic arguments: (a) certain defenses are both legally invalid and
 7 insufficiently pled; (b) certain defenses are valid defenses but insufficiently pled; (c) references to
 8 government agency action not having "preclusive" effect and a reservation of rights are improper;
 9 and (d) Apple's prayer for relief is improper. None is persuasive, and the Motion serves only to
 10 further delay progress towards resolution of this employment retaliation case on its merits.

11 As an initial matter, the Court should deny the motion outright as a sanction for violating
 12 Rule 11¹, given that Plaintiff repeatedly misrepresents, misquotes, and mis-cites the legal authority
 13 she contends support her motion—including fabricating quotes and even entire cases out of whole
 14 cloth. But the Motion fails on its substance as well. As to arguments (a) and (b), Plaintiff has not
 15 established that these defenses are legally invalid, nor has she established that under no set of
 16 circumstances could the defenses succeed as is required by Rule 12(f). As to arguments (c) and (d),
 17 Plaintiff has not established that these portions of Apple's Answer contain "redundant, immaterial,
 18 impertinent, or scandalous matter," as is required by Rule 12(f). The Court should deny the motion.²

19 **II. LEGAL STANDARD**

20 Rule 12(f) allows a court to "strike from a pleading an insufficient defense or any redundant,
 21 immaterial, impertinent, or scandalous matter." But "[m]otions to strike a defense as insufficient
 22 are not favored ... because of their somewhat dilatory and often harassing character." *Solis v. Zenith*
 23 *Cap., LLC*, No. C 08-4854 PJH, 2009 WL 1324051, at *3 (N.D. Cal. May 8, 2009) (quoting Wright

24 ¹ All references to "Rules" are to the Federal Rules of Civil Procedure unless otherwise noted.

25 ² The Court could also separately deny the Motion to Strike as an improper attempted end-run
 26 around the applicable page limitations. Plaintiff improperly conflates the arguments and relief in
 27 this Motion and her contemporaneous Motion for a More Definite Statement (Dkt. 193)—in effect
 28 meaning she has filed pages in excess of the limitations as to each. For example, the instant Motion
 seeks alternative relief under Rule 12(e) (see Mot. at ¶¶ 36, 44, 55, 57, 84) without engaging with
 the applicable legal standards for that relief. The Court should evaluate this Motion (all 25 pages
 of it) as a Rule 12(f) motion and her companion motion under Rule 12(e) standards.

1 & Miller, *Federal Practice and Procedure: Civil* 3d § 1381). “Thus, even when technically
 2 appropriate and well-founded, Rule 12(f) motions often are not granted in the absence of a showing
 3 of prejudice to the moving party.” *Id.*

4 To determine that a defense is insufficient as a matter of law, “the court must be convinced
 5 that there are no questions of fact, that any questions of law are clear and not in dispute, and that
 6 under no set of circumstances could the defense succeed.” *Ganley v. Cnty. of San Mateo*, No. C06-
 7 3923 TEH, 2007 WL 902551, at *1 (N.D. Cal. Mar. 22, 2007). “[A] motion to strike which alleges
 8 the legal insufficiency of an affirmative defense will not be granted unless it appears to a certainty
 9 that plaintiffs would succeed despite any state of the facts which could be proved in support of the
 10 defense.” *Barnes v. AT & T Pension Ben. Plan-Nonbargained Program*, 718 F. Supp. 2d 1167,
 11 1170 (N.D. Cal. 2010) (internal quotations omitted).

12 The Ninth Circuit has confirmed that “[t]he key to determining the sufficiency of pleading
 13 an affirmative defense is whether it gives fair notice of the defense.” *Garcia v. Salvation Army*, 918
 14 F.3d 997, 1008 (9th Cir. 2019) (a post *Twombly* and *Iqbal* case that does not discuss either in the
 15 context of an affirmative defense). This Court has held that the *Twombly* and *Iqbal* pleading
 16 standards apply to affirmative defenses, and that under these standards, “a defense need not include
 17 extensive factual allegations in order to give fair notice” although “bare statements reciting mere
 18 legal conclusions may not be sufficient.” *Izett v. Crown Asset Mgmt., LLC*, No. 18-CV-05224-
 19 EMC, 2018 WL 6592442, at *1 (N.D. Cal. Dec. 14, 2018). However, other federal district courts
 20 in California have not. *See, e.g., Kohler v. Islands Restaurants, LP*, 280 F.R.D. 560, 566 (S.D. Cal.
 21 2012) (“Absent further direction, this Court declines to extend the *Twombly/ Iqbal* pleading
 22 standards to affirmative defenses.”).

23 A decision to strike material from the pleadings is vested to the sound discretion of the trial
 24 court. *Solis*, 2009 WL 1324051, at *3. (citing *Nurse v. United States*, 226 F.3d 996, 1000 (9th Cir.
 25 2000)). “If the court chooses to strike a defense, leave to amend should be freely given so long as
 26 there is no prejudice to the opposing party.” *Id.*

27
 28

1 **III. ARGUMENT**

2 **A. Plaintiff's Motion Should Be Denied for Violating Rule 11.**

3 Parties in federal court, including an unrepresented party like Plaintiff, are bound by
 4 Rule 11. This Rule entails that, when filing, Plaintiff is certifying to the court that the legal
 5 contentions presented in her briefs are “warranted by existing law or by a nonfrivolous argument
 6 for extending, modifying, or reversing existing law or for establishing new law.” Fed. R. Civ.
 7 P. 11(b)(2). That certification must be made “to the best of the person’s knowledge, information,
 8 and belief, formed after an inquiry reasonable under the circumstances.” *Id.* Here, Plaintiff’s
 9 reliance on artificial intelligence (“AI”) to draft her briefs, without confirming their accuracy, has
 10 resulted in continued misrepresentation of the law to this Court. *Compare* Dkt. No. 149 ¶ 5 (Plaintiff
 11 disclosing “use of generative AI”) *with* Dkt. No. 152 at 12 n.8 (Apple pointing out AI hallucinations
 12 submitted by Plaintiff); Dkt. No. 167 at 11-12 (same); Dkt. No. 198 at 12 n.6 (same). This continued
 13 misconduct does harm to Apple, this Court, and courts more generally. *See Mata v. Avianca, Inc.*,
 14 678 F. Supp. 3d 443, 448-49 (S.D.N.Y. 2023) (noting the “[m]any harms flow from the submission
 15 of fake opinions” include that “[t]he opposing party wastes time and money in exposing the
 16 deception[,] [t]he Court’s time is taken from other important endeavors[,] … [i]t promotes cynicism
 17 about the legal profession and the American judicial system[,] … [a]nd a future litigant may be
 18 tempted to defy a judicial ruling by disingenuously claiming doubt about its authenticity”). Pro se
 19 plaintiffs are not exempt from this standard. *See Kruglyak v. Home Depot U.S.A., Inc.*, No.
 20 1:22CV00024, 2025 WL 900621, at *3 (W.D. Va. Mar. 25, 2025) (ordering pro se plaintiff to
 21 identify any cases that are the result of generative AI, confirming plaintiff is responsible for
 22 verifying their accuracy, and cautioning that if he fails to do so he will be held in contempt of court
 23 and lose his ability to proceed pro se).

24 Plaintiff’s latest flurry of filings is no exception.³ For example, this Motion contains ***at least***

25

 26 ³ Plaintiff’s blind reliance on artificial intelligence is not the only Rule 11 issue that warrants this
 27 Court’s consideration; paragraph 94 of her Motion suggests someone else may be drafting or editing
 28 her motions without proper oversight by Plaintiff. *See Mot.* ¶ 94 (emphasis added) (“This approach
 29 directly challenges the procedural flaws in their prayer for relief and argues for the proper course
 30 of action in response to the claims and defenses they have raised. Hopefully, this helps ensure that
 31 Defendant doesn’t get to throw out these extraneous and baseless requests in their answer. ***Let me***
 32 ***know if you need any adjustments or further help!***”). While it is unclear whether this “help[er]”

1 the following citations that violate Rule 11:

2 1. Citing Cases That Do Not Exist (at Least 9 Instances)

3 • Mot. ¶ 15: Plaintiff cites *Curry v. MightyNet, Inc.*, No. 20-cv-03797-JST, 2021 WL
 4 2682607, at *3 (N.D. Cal. June 15, 2021) as a case that “struck multiple affirmative defenses
 5 that were pled without facts.” However, 2021 WL 2682607 leads to a Patent Status File;
 6 counsel has been unable to locate any case on Westlaw titled *Curry v. MightyNet, Inc.*

7 • *Id.* ¶ 23: Plaintiff again cites *Curry v. MightyNet* for the proposition that the court struck
 8 boilerplate defenses including unclean hands and waiver. As noted above, *Curry* does not
 9 exist.

10 • *Id.* ¶ 26: Plaintiff cites *Mendoza v. Nordstrom, Inc.*, No. C13-01063-RS, 2014 WL 5456668,
 11 at *3 (N.D. Cal. Oct. 27, 2014) for the proposition that “where the court has already ruled
 12 that a claim is properly pleaded, a failure to state a claim defense must be stricken.”
 13 However, 2014 WL 5456668 leads to an expert report filed in *Biggs v. Bradford
 14 Management Company* in Texas state court. Case number C13-01063-RS is an invalid case
 15 number in the Northern District of California’s electronic filing system, though it may refer
 16 to *Carpenters Pension Trust Fund for Northern California et al v. Lindquist Family LLC*,
 17 No. 3:13-cv-01063-SC, which does not appear to have a Motion to Strike on the docket.
 18 While there is a case entitled *Mendoza v. Nordstrom, Inc.* from the **Central** District of
 19 California with an appeal to the Ninth Circuit, none of the orders and opinions available in
 20 Westlaw for that matter appear to be related to a motion to strike. *See, e.g., Mendoza v.
 21 Nordstrom, Inc.*, 778 F.3d 834 (9th Cir. 2015), *certified question answered*, 2 Cal. 5th 1074
 22 (2017); *Mendoza v. Nordstrom, Inc.*, No. SACV1000109CJCLGX, 2012 WL 12950481,
 23 at *1 (C.D. Cal. Nov. 5, 2012), *aff’d*, 865 F.3d 1261 (9th Cir. 2017).

24 • *Id.* ¶ 52: Plaintiff claims the court in *Murillo v. Pacific Gas & Elec. Co.*, 2011 WL 13176898
 25 (E.D. Cal. May 4, 2011) “struck an after-acquired evidence defense as conclusory and

26
 27 is authorized to practice law, it seems Plaintiff is allowing others to write her briefs without
 28 validation by Plaintiff that what they are writing is accurate or complies with Rule 11, and without
 those others appearing before this Court.

1 prejudicial.” However, 2011 WL 13176898 does not lead to any document in Westlaw.
 2 While there is a case titled *Murillo v. Pacific Gas & Elec. Co.* in the Eastern District of
 3 California, that case resolved in 2010. *See, e.g., Murillo v. Pac. Gas & Elec. Co.*, No. 2:08-
 4 1974 WBS GGH, 2010 WL 2889728 (E.D. Cal. July 21, 2010) (final settlement approval
 5 in 2010). The docket for that case does not contain any order striking the after acquired
 6 evidence defense.

- 7 • *Id.* ¶ 53: Plaintiff contends *EEOC v. Midwest Regional Med. Ctr., LLC*, 2008 WL 11335023
 8 (W.D. Okla. June 25, 2008) “makes clear that after-acquired evidence cannot be invoked to
 9 justify the employer’s retaliatory actions or to penalize the employee for consequences the
 10 employer set in motion.” However, 2008 WL 11335023 leads to *Andre v. Harbor Naples*
 11 *Mgmt., LLC*, No. 2:07-CV-581-FTM-SPC, 2008 WL 11335023, at *1 (M.D. Fla. May 22,
 12 2008), which is an order on a motion to compel unrelated to the after acquired evidence
 13 defense. While Westlaw does reveal at least eight orders from a case titled *EEOC v. Midwest*
 14 *Regional Med. Ctr., LLC*, in the Western District of Oklahoma, those orders are from 2014
 15 and 2017, not 2008, and the burden on Apple and the Court associated with reviewing each
 16 of them to see if any tangentially relate to purported holding is not justified by Plaintiff’s
 17 violation of Rule 11. *See, e.g., E.E.O.C. v. Midwest Reg’l Med. Ctr., LLC*, No. CIV-13-789-
 18 M, 2014 WL 1745081 (W.D. Okla. Apr. 30, 2014) (order on motion for protective order).
- 19 • *Id.* ¶ 60: Plaintiff cites *DeLeon v. Wells Fargo Bank, N.A.*, 2010 WL 3219305, at *6 (N.D.
 20 Cal. Aug. 12, 2010) as a decision that “struck a statute of limitations defense because the
 21 issue had already been addressed and rejected in previous rulings.” The citation 2010 WL
 22 3219305 leads to a case titled *Vann v. Evans*, which is a Northern District of California case
 23 dated August 12, 2010. While the court in *Vann* dismissed a pro se state prisoner’s Section
 24 1983 claim as barred by the statute of limitations, the case does not address striking an
 25 already addressed statute of limitations defense. While there are several orders from this
 26 Court available in Westlaw related to a case titled *DeLeon v. Wells Fargo Bank, N.A.*, none
 27 of them address the issue Plaintiff suggests. *See DeLeon v. Wells Fargo Bank, N.A.*, 729 F.
 28 Supp. 2d 1119, 1127-28 (N.D. Cal. 2010) (agreeing claim was time barred and denying

1 defendant's motion to strike complaint as moot after dismissing entire complaint); 2010 WL
 2 4285006, at *7 (N.D. Cal. Oct. 22, 2010) (denying defendant's motion to strike complaint
 3 as moot after dismissing entire first amended complaint); 2011 WL 311376, at *11 (N.D.
 4 Cal. Jan. 28, 2011) (same after dismissing entire second amended complaint).

- 5 • *Id.* ¶ 65: Plaintiff asserts that the court in *Doe v. Roman Catholic Archbishop of Cashel &*
 6 *Emly*, 2019 WL 1048236, at *3 (N.D. Cal. Mar. 5, 2019) "struck defenses where the
 7 defendant failed to provide specific factual allegations of waiver, estoppel, or consent. The
 8 citation she gives goes to a case called *Gualberto v. Wells Fargo Bank, N.A.*, 2019 WL
 9 1048236 (N.D. Cal. Mar. 5, 2019), which is an order granting a motion to dismiss based on
 10 preemption and failure to state a claim. *Doe v. Roman Catholic Archbishop of Cashel &*
 11 *Emly*, 177 Cal. App. 4th 209 (2009), is a California state court case addressing a motion to
 12 quash, not a motion to strike affirmative defenses.
- 13 • *Id.* ¶ 68: Plaintiff again cites *Curry v. MightyNet*, this time for the proposition that "the court
 14 struck defenses based on waiver, estoppel, and laches where the defendant failed to plead
 15 any specific facts to support those defenses." As noted above, this case does not exist.
- 16 • *Id.* ¶ 68: Plaintiff claims that in *Crosby v. Strayhorn*, 2018 WL 3130993, at *6 (E.D. Cal.
 17 June 22, 2018), "the court held that affirmative defenses must include supporting facts to
 18 satisfy the plausibility standard under Rule 8." However, the citation 2018 WL 3130993 is
 19 a Florida state court case. *See E.H. v. State*, No. 2D17-4093, 2018 WL 3130993 (Fla. Dist.
 20 Ct. App. June 27, 2018). Counsel has been unable to locate a case titled *Crosby v. Strayhorn*
 21 from the Eastern District of California.

22 **2. Citing Quotes That Do Not Exist (at Least 3 Instances)**

- 23 • *Id.* ¶ 8: Plaintiff quotes *Kohler*, 280 F.R.D. at 566 as stating: "The heightened pleading
 24 standard of *Twombly* and *Iqbal* applies to affirmative defenses." However, *Kohler* held the
 25 *opposite*, and refused to apply the *Twombly* and *Iqbal* standard to affirmative defenses. *Id.*
 26 (citations omitted) ("Absent further direction, this Court declines to extend the *Twombly*/
 27 *Iqbal* pleading standards to affirmative defenses. Several considerations inform this
 28 conclusion. Most significantly, the Ninth Circuit has continued to recognize the 'fair notice'

1 standard of affirmative defense pleading even after *Twombly* and *Iqbal*.”).

2 • *Id.* ¶¶ 9, 18: Plaintiff again quotes *Kohler* as stating “[a]ffirmative defenses are subject to
3 the same pleading standards as complaints,” which is the *opposite* of its holding. *Kohler*,
4 280 F.R.D. at 566.

5 • *Id.* ¶¶ 9, 18: Plaintiff quotes *Barnes*, 718 F. Supp. 2d at 1174 as stating (respectively) that
6 “[b]oilerplate defenses without any supporting factual basis do not meet the *Iqbal* standard”
7 and that “[b]oilerplate defenses that fail to provide fair notice must be stricken.” These
8 quotes do not appear in *Barnes* (although the general premise of the quotes is supported by
9 *Barnes*).

10 **3. Plainly Misrepresenting Case Holdings (at Least 11 Instances)**

11 • *Id.* ¶ 38: Plaintiff contends the Ninth Circuit in *Kohler v. Flava Enterprises*, 779 F.3d 1016,
12 1019 (9th Cir. 2015), “held that boilerplate defenses without factual allegations are subject
13 to being stricken.” However, *Kohler* addressed the granting of a motion for summary
14 judgment, not a motion to strike. There, Plaintiff in an ADA action appealed summary
15 judgment in defendant’s favor, in part, on the grounds that he did not receive fair notice
16 because defendant did not plead “equivalent facilitation” as an affirmative defense. *Id.* at
17 1019. The Ninth Circuit rejected this argument because defendant pled “its store was
18 compliant due to its use of ‘alternative methods’ of accessibility,” which is a term found in
19 the ADA. *Id.* The court found this sufficient to assert this defense because “the ‘fair notice’
20 required by the pleading standards only requires describing the defense in ‘general terms.’”
21 *Id.* Accordingly, not only did *Kohler* not hold as Plaintiff says it did; its holding is at odds
22 with the specificity that Plaintiff demands in Apple’s Answer.

23 • *Id.* ¶ 39: Plaintiff contends the Ninth Circuit in *Haddad v. Lockheed Cal. Corp.*, 720 F.2d
24 1454, 1457–58 (9th Cir. 1983) held that “mitigation cannot be expected when an
25 employee’s injuries or blacklisting prevent obtaining comparable employment.” However,
26 *Haddad* does not address mitigation of damages. Instead, *Haddad* is an appeal following a
27 jury trial that resulted in a verdict in favor of Lockheed on all of plaintiff’s age and national
28 origin discrimination claims. It is unclear how Plaintiff could believe *Haddad* addressed

1 mitigation of damages when the jury found no liability.

2 • *Id.* ¶ 43: Plaintiff asserts that *Cruz v. MRC Receivables Corp.*, 563 F. Supp. 2d 1092, 1096
 3 (N.D. Cal. 2008) “struck” defenses similar to mitigation of damages “for failing to include
 4 specific factual allegations.” However, the court in *Cruz* granted summary judgment
 5 without addressing any issues pertaining to mitigation of damages – so Plaintiff is wrong
 6 on that count. The court did strike a portion of a witness declaration as hearsay, but this
 7 decision had nothing to do with striking affirmative defenses or mitigation of damages. *Id.*
 8 at 1094-96.

9 • *Id.* ¶ 58: Plaintiff contends that in *Rivera v. Peri & Sons Farms, Inc.*, 735 F.3d 892, 902
 10 (9th Cir. 2013), “the Ninth Circuit held that a statute of limitations defense cannot be raised
 11 unless the complaint clearly shows on its face that the claims are untimely.” Not so. Instead,
 12 *Rivera* confirms the well-established precedent that an affirmative defense—including
 13 statute of limitations—cannot be raised ***in a motion to dismiss*** unless the defense is obvious
 14 on the face of a complaint. *Id.* Nothing in *Rivera* prohibits a defendant from asserting this
 15 defense ***in an answer*** when the defense is not apparent on the face of the complaint, and for
 16 obvious reasons; otherwise, a plaintiff could always preclude a defendant from ever raising
 17 this defense by simply omitting the allegations necessary to assert it. That is not the law.

18 • *Id.* ¶ 60: Plaintiff suggests that *Perez v. Gordon & Wong Law Grp., P.C.*, No. 11-03323-
 19 LHK, 2012 WL 1029425, at *9 (N.D. Cal. Mar. 26, 2012) supports the proposition that
 20 “[c]ourts should strike statute of limitations defenses where timeliness has already been
 21 adjudicated.” While *Perez* involves a motion to strike affirmative defenses, it says nothing
 22 about striking a statute of limitations defense where timeliness has already been adjudicated.

23 • *Id.* ¶ 65: Plaintiff contends that in *Deschaine v. St. Joseph Health System*, No. CIV. 2:13-
 24 1991 WBS CKD, 2013 WL 6054456, at *5 (N.D. Cal. Nov. 15, 2013), “the court
 25 emphasized that affirmative defenses involving consent must include specific factual
 26 allegations showing the plaintiff’s conduct and the alleged consent.” But *Deschaine*
 27 involves a motion to dismiss in which a plaintiff’s promissory estoppel claim was dismissed
 28 because the plaintiff failed to plead any injury in reliance on the alleged promises. The case

1 does not address any affirmative defenses, much less the affirmative defense of consent.

2 • *Id. ¶ 66*: Plaintiff asserts that in *Cruz v. MRC Receivables Corp.*, 563 F. Supp. 2d at, “the
3 court struck this defense [privileged conduct or justification] where it was vague and
4 unsupported by any factual allegations.” But *Cruz* is an order granting defendant’s motion
5 for summary judgment and does not address affirmative defenses.

6 • *Id. ¶ 66*: Plaintiff claims that in *E.E.O.C. v. BNSF Railway Co.*, 902 F.3d 916, 922 (9th Cir.
7 2018), “the Ninth Circuit emphasized that a defendant asserting a business necessity defense
8 must provide adequate factual support to give the plaintiff fair notice of the underlying legal
9 theory.” In *BNSF Railway*, the Ninth Circuit reviewed an order granting partial summary
10 judgment in favor of the EEOC, noting that the lower court held that “BNSF did not offer
11 evidence sufficient to support any affirmative defense” in opposition to the motion for
12 summary judgment and confirmed “BNSF offers no affirmative defense on appeal.” *Id.* at
13 921, 928. The case says nothing about the pleading standards for affirmative defenses.

14 • *Id. ¶ 67*: Plaintiff contends that the court in *G&G Closed Circuit Events, LLC v. Nguyen*,
15 No. 10-CV-00168-LHK, 2010 WL 3749284, at *3 (N.D. Cal. Sept. 23, 2010) “clarified
16 that a defense of privilege must be backed by specific facts.” While *G&G* did involve a
17 motion to strike, it did not address the defense of privilege.

18 • *Id. ¶ 86*: Plaintiff represents that “[i]n *Clark v. State Farm Mut. Auto. Ins. Co.*, 231 F.R.D.
19 405, 407 (C.D. Cal. 2005), the court held that a due process defense to punitive damages
20 must be pled with sufficient factual support, and it is not enough for the defendant to make
21 a general, conclusory statement.” That is flat out wrong. *Clark* addresses the sufficiency of
22 a *plaintiff’s* pleading a prayer for punitive damages, not a *defendant’s* defense to the
23 imposition of such damages. The words “due process” appear nowhere in the case.

24 • *Id. ¶ 86*: Plaintiff likewise represents that “in *Perez v. Gordon & Wong*, 2012 WL 1029425
25 (N.D. Cal. 2012), the court struck a similar defense where the defendant failed to plead any
26 facts to substantiate the claim that punitive damages would violate due process.” Again, the
27 words “due process” appear nowhere in the opinion (although this case, unlike *Clark*, at
28 least addresses a motion to strike affirmative defenses).

1 As noted above and in Apple’s companion Opposition to Plaintiff’s Motion for a More
 2 Definite Statement and its Objection to Plaintiff’s Request for Judicial Notice, this is not Plaintiff’s
 3 first foray into improperly misquoting cases, misrepresenting the holdings of cases, or citing cases
 4 that do not exist. While certain leniencies have been afforded to Plaintiff due to her pro se status,
 5 her serial motion practice is untenable and in bad faith when it continually relies on AI
 6 hallucinations and fictions presented to this Court

7 Plaintiff is bound by Rule 11 and, given her repeated malfeasance, this Court should strike
 8 or deny this Motion based on her violation of that rule. *See, e.g., Wadsworth v. Walmart Inc.*, No.
 9 2:23-CV-118-KHR, 2025 WL 608073, at *4 (D. Wyo. Feb. 24, 2025) (“A fake opinion is not
 10 “existing law” and citation to a fake opinion does not provide a non-frivolous ground for extending,
 11 modifying, or reversing existing law, or for establishing new law.’ … [T]hus, using a fake opinion
 12 to support an argument is a violation of Rule 11(b)(2).” (quoting *Mata*, 678 F. Supp. 3d at 461));
 13 *Dehghani v. Castro*, No. 2:25-CV-0052 MIS-DLM, 2025 WL 988009, at *5 (D.N.M. Apr. 2, 2025)
 14 (cataloging sanctions various federal courts have imposed for citing AI-generated cases as if they
 15 were valid authority). The Court should also caution her that future motions will be summarily
 16 denied if they contain fake AI-generated content. *See Sanders v. United States*, No. 24-CV-1301,
 17 2025 WL 957666, at *5 (Fed. Cl. Mar. 31, 2025) (noting that “[w]hile courts afford pro se litigants
 18 considerable leeway, that leeway does not relieve pro se litigants of their obligation under Rule 11
 19 to confirm the validity of any cited legal authority” and warning that “citations to nonexistent cases
 20 may result in sanctions, including the striking of filings, the imposition of filing restrictions,
 21 monetary penalties, or dismissal of the action”); *Thomas v. Pangburn*, No. CV423-046, 2023 WL
 22 9425765, at *4-7 (S.D. Ga. Oct. 6, 2023) (recommending dismissal of pro se plaintiff’s amended
 23 complaint as sanction for violating Rule 11(b) by, *inter alia*, citing fake cases), *R. & R. adopted*,
 24 2024 WL 329947 (S.D. Ga. Jan. 29, 2024), *appeal dismissed*, 2024 WL 5389428 (11th Cir. Oct.
 25 21, 2024).

26 **B. Plaintiff’s Attacks on Apple’s Affirmative Defenses Fail.**

27 Plaintiff’s Motion should also be denied on its merits. Apple appropriately asserted these
 28 defenses given not only the claims that remain in the case, but Plaintiff’s ever-shifting stances as

1 to what she contends is relevant and serial efforts to continue to revive claims that have been
 2 dismissed and issues that bear only on those claims. Plaintiff's Motion regarding these defenses
 3 does nothing to change the core issues that this case will involve—which center on the reasons why
 4 Plaintiff was terminated by Apple—and serves only to further extend the pleadings phase and delay
 5 progress towards a resolution on the merits.

6 Though the Motion is no model of clarity, her attacks on Apple's affirmative defenses
 7 appear to broadly fall into two buckets—(1) defenses that she claims are unavailable as a matter of
 8 law as well as unsupported by adequate factual allegations, and (2) defenses that she claims are
 9 legally cognizable but contends are insufficiently pled. Apple discusses each in turn.

10 **1. Plaintiff's Arguments That Certain Defenses Are Legally Invalid (as**
 11 **Well as Insufficiently Pled) Fail.**

12 Plaintiff contends that Apple's first (failure to state a claim), fourth (at-will employment),
 13 seventh (offset or setoff), eleventh (good faith/no malice), twelfth (statute of limitations), fourteenth
 14 (business judgment) and fifteenth (worker's compensation exclusive remedy) affirmative defenses
 15 are legally invalid and must be stricken regardless of any factual predicate supporting these
 16 defenses. *See Mot. §§ V.C., V.F., V.H, V.I., V.K, V.O.* In the alternative, Plaintiff argues these
 17 defenses lack adequate supporting facts. Plaintiff's arguments should be rejected.

18 **a. First Affirmative Defense: Failure to State a Claim**

19 Rule 12(b) directs a defendant to assert "every" defense—including, presumably, failure to
 20 state a claim upon which relief may be granted—in its responsive pleading, while also permitting
 21 a defendant to file a motion on certain grounds. Fed. R. Civ. P. 12(b) (requiring that "every" defense
 22 "must" be asserted in a responsive pleading, while noting some "may" be asserted in a motion).
 23 Further, Rule 12(h)(2) states that the defense of failure to state a claim may be raised in any pleading
 24 allowed or ordered under Rule 7(a), in a 12(c) motion, or at trial. *See also Garcia*, 918 F.3d at 1008
 25 (confirming failure to state a claim upon which relief may be granted is "a defense which may be
 26 raised up and until the close of trial"). Indeed, Rule 8(b) does not delineate between defenses and
 27 affirmative defenses, instead referring only to "defenses" generally.

28 Notwithstanding the above, Apple acknowledges that there is authority—including from

1 this Court—for the proposition that failure to state a claim asserts a defect in Plaintiff’s *prima facie*
2 case and not an affirmative defense that needs to be included in an answer. *See, e.g., Izett*, 2018
3 WL 6592442, at *2; *but see, e.g., Kohler*, 280 F.R.D. at 567 (confirming negative defenses may be
4 raised in an answer pursuant to Rule 8(b); emphasizing that Rule 12(b) permits defendants to assert
5 such defenses “by motion or in the responsive pleading”; and reasoning “[t]he Court fails to see
6 how identifying a defense as ‘affirmative,’ when in actuality it is not, makes that defense legally
7 insufficient”). To the extent the Court deems this defense unnecessary in an answer because it is
8 not “affirmative,” Apple reserves its right to assert Plaintiff’s failure to state a claim at a future
9 point in the case up to and through the close of trial.

b. Fourth, Eleventh, and Fourteenth Affirmative Defenses: At-Will, Good Faith, and Business Judgment

12 Plaintiff contends that Apple’s fourth (at-will), eleventh (that it acted in good faith, no
13 malice, and with reasonable grounds for believing its actions did not violate the law), and fourteenth
14 (business judgment) defenses are legally invalid and insufficiently unsupported. Again, Plaintiff is
15 wrong.

16 **First**, Plaintiff argues that these are legally invalid for a variety of reasons. *See Mot.* ¶¶ 69,
17 72, 85. But the starting point for all employment matters is at-will employment, a baseline that is
18 embedded with the burden-shifting framework governing Plaintiff’s retaliation and wrongful
19 termination claims. Absent any showing that the termination was for unlawful reasons, Apple was
20 entitled to terminate her at-will employment “at any time without cause, for any or no reason.” *Guz*
21 *v. Bechtel Nat’l Inc.*, 24 Cal. 4th 317, 335 (2000) (internal quotations marks omitted); *see also*
22 *Harris v. City of Santa Monica*, 56 Cal. 4th 203, 213 (2013) (defendant “asserted as an affirmative
23 defense that it had legitimate, nondiscriminatory reasons to fire her as an at-will, probationary
24 employee”). Plaintiff must prove that her termination was unlawful in light of these background
25 principles.

26 As Plaintiff knows, these defenses relate to Apple’s decision to terminate Plaintiff (an at-
27 will employee) based on her unauthorized disclosure of confidential product-related information,
28 and Apple’s finding that she failed to cooperate and to provide accurate and complete information

1 during the investigatory process. *See* Dkt. No. 32-1, ¶ 523 (earlier complaint excerpting termination
 2 notice). Given the issues in this case, the defenses of at-will employment, good faith, and business
 3 judgment implicate issues similar to the second (causation), third (comparative fault), eighth
 4 (unclean hands, *in pari delicto*, and/or after acquired evidence), ninth (same decision), and tenth
 5 (business necessity) defenses—defenses Plaintiff concedes are permissible. As such, Apple
 6 appropriately asserted these defenses alongside those ones.

7 Plaintiff's quibbling to the contrary wastes the parties' and the Court's time, as they do
 8 nothing to change the fact that this case will turn on the reasons Apple terminated Plaintiff and
 9 whether those reasons were lawful. *Accord* Cal. Lab. Code § 1102.6 (if plaintiff proves *prima facie*
 10 case of whistleblower retaliation, burden shifts to employer to demonstrate "that the alleged action
 11 would have occurred for legitimate, independent reasons even if the employee had not engaged in
 12 activities protected by Section 1102.5"); *McGrory v. Applied Signal Tech., Inc.*, 212 Cal. App. 4th
 13 1510, 1528 (2013) (holding that "public policy does not protect deceptive activity during an internal
 14 investigation" and "[s]uch conduct is a legitimate reason to terminate an at-will employee");
 15 *E.E.O.C. v. Total Sys. Servs., Inc.*, 221 F.3d 1171, 1176 (11th Cir. 2000) ("[W]hether to fire an
 16 employee for lying to the employer in the course of the business's conduct of an important internal
 17 investigation is basically a business decision; this decision, as with most business decisions, is not
 18 for the courts to second-guess as a kind of super-personnel department.").

19 **Second**, these defenses are also sufficiently pled. Plaintiff knows Apple investigated her for
 20 unauthorized disclosure of Apple's confidential information—a fact she concedes in her Fifth
 21 Amended Complaint ("5AC") and that Apple admits in its Answer. *See* Dkt. 142, ¶ 178; Dkt. 183,
 22 ¶ 178. Plaintiff is also fully aware that Apple has policies regarding the treatment of confidential
 23 information and that Apple informed her that she was fired for violating these policies, and failing
 24 to cooperate into an investigation into her policy violations. *See* Dkt. 32-1, ¶ 523. As such, Plaintiff
 25 cannot plausibly contend that she is not on "fair notice" of the basis for Apple's assertion of these
 26 defenses. *Garcia*, 918 F.3d at 1008; *Izett*, 2018 WL 6592442, at *1.

27
 28

c. Seventh Affirmative Defense: Offset to Prevent Double Recovery

Plaintiff contends that Apple's defense of offset or setoff is both legally invalid and unsupported by sufficient factual allegations. *See* Mot. § V.F. But Plaintiff is wrong on both counts.

First, Plaintiff contends that this defense is not valid because *Witt v. Jackson*, 57 Cal. 2d 57 (1961), and its progeny do not apply to whistleblower retaliation claims. Mot. ¶ 45. But this is immaterial, given that Plaintiffs also asserts a tort claim for wrongful termination and does not dispute that the principles of offset and double recovery are applicable to tort claims such as a wrongful termination claim. Any monies Plaintiff received from post-termination employment would be appropriately deducted from any lost earnings she seeks to recover from Apple. *See, e.g.*, *Sanchez v. Master Prot., LP*, No. CV208472PSGRAOX, 2022 WL 2104519, at *2 (C.D. Cal. May 6, 2022) (in wrongful termination case, granting Defendants' request to instruct jury to deduct Plaintiff's post-termination earnings from any lost earnings award under the reasoning of *Martinez v. Rite Aid Corp.*, 63 Cal. App. 5th 958, 973-76 (2021)); *Martinez*, 63 Cal. App. 5th at 973 (wrongful termination recovery appropriately reduced if employer can prove offsetting mitigation).

Second, Apple has sufficiently pled this defense by alleging the “general terms” necessary to give Plaintiff “fair notice” of this defense. *Garcia*, 918 F.3d at 1008; *Izett*, 2018 WL 6592442, at *1. Plaintiff has fair notice that Apple’s defense is based on any money received from any source after Plaintiff was terminated. Dkt. 183, p. 42, ¶ 7. Indeed, Plaintiff’s critique that Apple did not reference her specific sources of post-termination income (see Mot. ¶ 46) illustrates she understands the basis for this defense and what discovery will be relevant to it. Plaintiff’s understanding of this issue renders nonsensical her argument that “Apple aims to preserve the general right to offset Plaintiff’s damages while avoiding discovery obligations or scrutiny that might undermine this defense.” *Id.* ¶ 47. Apple is not avoiding any discovery obligations by asserting this defense. To the contrary, Apple has pled this defense to allow discovery and she clearly understands the type of discovery that will be required. While discovery may narrow or defeat this defense—just as discovery may narrow or defeat Plaintiff’s claims—that is no basis to claim the defense is not appropriately asserted at the pleading stage.

d. Twelfth Affirmative Defense: Statute of Limitations

Plaintiff's claim that Apple's statute of limitations defense is insufficiently pled (*see* Mot. § V.H.) is contrary to Ninth Circuit precedent. A plaintiff has fair notice of a statute of limitations defense provided she is informed of the defense and the statute upon which the defense relies. *See Wyshak v. City Nat. Bank*, 607 F.2d 824, 827 (9th Cir. 1979). Plaintiff's Motion admits that Apple provided fair notice under this standard. *See* Mot. ¶ 59; Dkt. No. 183, p. 43, ¶ 12. Apple has sufficiently pled this defense.

Plaintiff proceeds to misrepresent the statutes at issue when she asserts that the defense is “meritless.” Mot. ¶ 59. California Code of Civil Procedure sections 335.1, 338(a), and 340(a) govern the claims at issue; her misstatements to the contrary should be rejected (and arguably themselves violate Rule 11).

Section 335.1: Plaintiff misrepresents this section as limited to personal injury torts. Not so. This section provides a two-year limitations period for an action alleging injuries caused by the wrongful act of another and is the applicable statute governing Plaintiff's wrongful termination in violation of public policy (*Tamony*) claim. *See Prue v. Brady Co./San Diego*, 242 Cal. App. 4th 1367, 1382 (2015).

Section 338(a): Contrary to Plaintiff’s suggestion that this section is limited to claims sounding in fraud, it provides a three-year limitations period for any “action upon a liability created by statute, other than a penalty or forfeiture” and is the applicable statute of limitations for her three retaliation claims, each of which was “created by statute.” *See* Dkt. 142 at pp. 47-48 (Count Two: Cal. Labor Code § 1102.5), pp. 48-49 (Count Three: Cal. Labor Code § 6310), pp. 49-52 (Count Four: Cal. Labor Code § 98.6).

Section 340(a): This section does not apply to written contract claims, as Plaintiff wrongfully asserts. Mot. ¶ 59. Instead, this section provides a one-year limitations period for “[a]n action upon a statute for a penalty or forfeiture, if the action is given to an individual, or to an individual and the state, except if the statute imposing it prescribes a different limitation.” Cal. Civ. Proc. Code § 340(a). Plaintiff seeks civil penalties based on California Labor Code provisions that do not contain a different limitations period. See Dkt. No. 142, p. 77 (seeking “[a] civil penalty of \$10,000

per employee for each violation of Cal.Lab.C. § 98.6 and § 1102.5"). Thus, Section 340(a)'s limitations period is clearly material to Plaintiff's claims for civil penalties.

e. **Fifteenth Affirmative Defense: Workers' Compensation Exclusivity**

Plaintiff contends that this affirmative defense is unavailable because, according to her, California Supreme Court precedent establishing worker's compensation as the exclusive remedy for injuries arising in the course of employment is categorically inapplicable to claims brought under California's whistleblower statutes. *See Mot. at ¶¶ 61-62* (citing *Shoemaker v. Myers*, 52 Cal. 3d 1, 25 (1990) and *Cabesuela v. Browning-Ferris Industries of Cal., Inc.*, 68 Cal. App. 4th 101, 113 (1998)). But as *Shoemaker* confirms, worker's compensation exclusivity can apply if a plaintiff attempts to predicate her whistleblower claim on something **other than** violation of an express statute or fundamental public policy. *See* 52 Cal. 3d at 25 (finding intentional infliction of emotional distress claim preempted by worker's compensation exclusivity even when the conduct was based on the same facts as a whistleblower claim); *see also Miklosy v. Regents of Univ. of California*, 44 Cal. 4th 876, 903 (2008) (affirming rule). In this case, Plaintiff's sprawling theories of liability have been a moving target. Accordingly, Apple appropriately asserted this defense in its answer as it may bar Plaintiff's remaining non-statutory *Tamency* claim, depending on how she ultimately chooses to litigate it—for example, to the extent she continues to improperly try to tether her remaining claims to facts supporting the toxic tort claims this Court has dismissed.

Alternatively, Apple alleged as part of this defense that “it may be entitled to a setoff for any amounts paid to Plaintiff pursuant to the California Workers’ Compensation Act.” Dkt. No. 183, p. 43, ¶ 15. This is an appropriate independent basis for asserting the defense. *See Adams Fruit Co. v. Barrett*, 494 U.S. 638, 650-51 (1990) (agreeing that even where worker’s compensation exclusive remedy is inapplicable, award of actual damages can be offset by benefits received under state workers’ compensation law).

2. Plaintiff's Attacks on Admittedly Valid Defenses Also Fail.

Plaintiff does not dispute that the following defenses are proper affirmative defenses, but argues solely that Apple has failed to allege sufficient facts to support them: second (causation),

1 third (comparative fault), fifth (consent), sixth (failure to mitigate), eighth (unclean hands, *in pari
2 delicto*, and/or after-acquired evidence), ninth (same decision), tenth (business necessity), and
3 thirteenth (constitutional limits on punitive damages). *See* Mot. §§ V.E, V.G, V.J, V.K, V.L, V.N,
4 V.O. Again, Plaintiff is wrong, as she has “fair notice” of the bases for Apple’s assertion of these
5 defenses. *Garcia*, 918 F.3d at 1008; *Izett*, 2018 WL 6592442, at *1.

a. Second, Third, Eighth, Ninth, and Tenth Affirmative Defenses: Defenses Arising From Plaintiff's Unauthorized Disclosure of Apple's Confidential Information

8 Multiple defenses Plaintiff challenges as unsupported by facts are based on Plaintiff's
9 unauthorized disclosure of Apple's confidential information and her lack of candor/cooperation
10 during Apple's investigation. As detailed above, Plaintiff knows Apple investigated her for
11 unauthorized disclosure of Apple's confidential information and that Apple informed her that she
12 was terminated for that reason (as well as failing to participate in the resultant investigation). *See*
13 Dkt. 32-1, ¶ 523; Dkt. 142, ¶ 178; Dkt. 183, ¶ 178. As such, Plaintiff cannot plausibly contend that
14 she does not have "fair notice" for Apple's assertion of its second (causation), third (comparative
15 fault), eighth (unclean hands, *in pari delicto*, and/or after acquired evidence), ninth (same decision),
16 and tenth (business necessity) defenses.

b. Fifth Affirmative Defense: Consent⁴

18 Plaintiff's suggestion that Apple has not adequately pled a basis for the affirmative defense
19 of consent is belied by the allegations in her 5AC and Apple's answer thereto. In the operative
20 complaint, Plaintiff alleges she did not consent to Apple's use of the Gobbler application on her
21 phone. Dkt. No. 142, ¶ 218. In its Answer, Apple denied this allegation and further alleged that
22 “[p]rior to using Gobbler app, Plaintiff signed a User Study Informed Consent, which explained
23 that her decision to participate in the study was completely voluntary. The User Study Informed
24 Consent informed her that the app would capture photos and video while she interacted with her
25 phone and that she would be able to review each capture and decide whether to remove it.” Dkt.
26 No. 183, ¶ 218. Apple has pled sufficient facts supporting this affirmative defense.

⁴ In Section V.J of Plaintiff's Motion also argues that waiver, estoppel, and laches are also insufficiently pled; however, Apple did not assert those defenses.

c. **Sixth Affirmative Defense: Failure to Mitigate**

According to Plaintiff, Apple must apparently plead every conceivable fact relevant to the affirmative defense of failure to mitigate—even prior to discovery through which Plaintiff would be required to inform Apple of post-employment sources of income—in order to meet the *Twombly/Iqbal* standard. *See* Mot. ¶¶ 36-37 (“Apple’s Answer fails to identify any actual job Plaintiff allegedly turned down, when or where suitable employment was available, or any facts showing Plaintiff’s failure to mitigate.”). Not so. Plaintiff is on fair notice (*via* this defense and the companion seventh defense (offset)) that her failure to seek, accept, or maintain comparable employment what is at issue in this defense—as the arguments in her Motion make evidence.

d. Thirteenth Affirmative Defense: Constitutional Limits on Punitive Damages

Plaintiff also faults Apple for asserting an affirmative defense to any punitive damages award in this case that might be violative of due process, equal protection, and other constitutional provisions. *See Mot.* ¶ 86. But the only two cases she cites in support of her argument that this defense must be “supported by specific factual allegations” say no such thing; indeed, they do not even **mention** any of these constitutional provisions. *See Section III.A.3, supra.* Apple appropriately asserted that the punitive damages Plaintiff seeks are excessive and inconsistent with applicable law, including because Plaintiff herself made clear the exorbitant relief she seeks. *See, e.g.*, Dkt. 32-2, ¶¶ 1587-1618.

C. The Challenged Statements That Are Not Affirmative Defenses Are Also Appropriate.

Apart from insufficient defenses, courts may also strike “redundant, redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). Plaintiff has neither argued nor established that the additional statements she challenges meet this standard.

1. Apple's Reservation of Rights Was Proper.

Plaintiff contends that Apple’s reservation of rights should be stricken because it is “not a proper affirmative defense. Mot. ¶ 76. But Apple did not assert any affirmative defense on these grounds. Its Answer simply made clear that it may have “additional, as yet unstated, defenses

1 available” and “reserve[d] the right to assert additional defenses in the event discovery indicates it
 2 would be appropriate to do so.” Dkt. No. 183, p. 43, ¶ 16. This was entirely appropriate and
 3 Plaintiff’s motion directed at this statement is meritless. *See Fed. R. Civ. P. 12(h)(2)* (outlining host
 4 of defenses that may be raised at any point in a case up to and including “at trial”).

5 **2. References in Apple’s Answer to Government Actions Not Having**
 6 **“Preclusive Effect” in This Litigation Are Appropriate Given Plaintiff’s**
Allegations.

7 Plaintiff also seeks to strike some number of unspecified references in Apple’s Answer to
 8 government actions not having “preclusive effect,” contending that such “mention[s] are “irrelevant
 9 and improper.” Mot. ¶ 28. However, Rule 12(f) authorizes courts only to strike matter that is
 10 “impertinent or immaterial.” To demonstrate that standard is met, Plaintiff would have to show that
 11 any such reference “has no essential or important relationship to the claim for relief pleaded” and
 12 “does not pertain and is not necessary to the issues in question in the case.” *Barnes*, 718 F. Supp.
 13 2d at 1170. She has not done so.

14 Plaintiff’s Motion on this issue is premised on the argument that “Plaintiff never alleged
 15 that the government’s actions, such as investigations or enforcement, have any preclusive effect on
 16 the claims at issue here.” Mot. ¶ 28. While Apple agrees that the government actions have no
 17 bearing on the merits of Plaintiff’s claims, Apple asserted these defenses because *Plaintiff*
 18 repeatedly (and wrongly) suggests in her 5AC that one or more government agencies has already
 19 made a final decision in one or more separate administrative matters she contends are relevant to
 20 her claims in this case. Because Plaintiff (wrongly) suggests in her complaint that administrative
 21 proceedings have already decided issues before this Court, Apple was well within its rights to deny
 22 those insinuations outright.

23 For example, Plaintiff’s contemporaneously filed Request for Judicial Notice argues that
 24 “[t]he terms of the NLRB settlement agreement are directly relevant to the present litigation, as
 25 they address Apple’s employment policies, non-disclosure agreements (NDAs), and confidentiality
 26 provisions—the very issues in dispute before this Court.” Dkt. No. 194, ¶ 6. Plaintiff made similar
 27 allegations in the 5AC in each paragraph to which Apple asserted there is no “preclusive effect.”
 28 *See* Dkt. No. 142, ¶¶ 8, 97 n.20, 173 n.30, 194, 201, 202, 203, 208 n.44, 230 n.46; Dkt. No. 183 ¶¶

1 8, 97, 173, 194, 201, 202, 203, 208, 230 (Apple’s responses to these paragraphs asserting that the
 2 referenced proceedings have no “preclusive effect”). Plaintiff cannot trumpet that those
 3 proceedings are “directly relevant” to her claims here and then be heard to complain when Apple’s
 4 answer denies that is so.

5 Plaintiff speaks out of both sides of her mouth on this issue, though. While the pleadings
 6 and paragraphs referenced above suggest Plaintiff believes there is a direct overlap between
 7 proceedings, in this Motion Plaintiff admits that her “claims are not based on the idea that the
 8 government’s actions have binding legal effect on this case.” Mot. ¶ 29. Apple agrees with **this**
 9 **version** of Plaintiff’s position—namely, that references to any action taken by a government agency
 10 in response to her separate complaints in separate proceedings “serves only to distract from the
 11 relevant issue of whether Plaintiff’s protected conduct led to unlawful retaliation.” *Id.* ¶ 31.
 12 However, as it stands, the Court should not strike Apple’s references in its Answer to government
 13 agency action not having “preclusive effect” where Plaintiff is the one who sought to put
 14 government agency action at issue (even though it is, as she admits, immaterial and impertinent to
 15 her claims here).

16 **D. Apple’s Prayer for Relief Is Proper.**

17 Plaintiff insists that the entirety of Apple’s prayer for relief should be stricken because
 18 Apple “has not filed any counterclaims or made any claims for affirmative relief.” Mot. § V.P., ¶ 87.
 19 But Plaintiff has not cited any case law holding that a prayer for relief in an answer is improper;
 20 Apple has not located any either. Moreover, Apple has pled affirmative defenses which, if proven
 21 by Apple, permit the relief requested (*i.e.*, judgment in its favor and dismissal with prejudice).

22 As to the attorney’s fee request, Apple agrees that it is unlikely to recover attorney’s fees
 23 against Plaintiff solely based on her four remaining claims (which lack two-way fee shifting), even
 24 if Apple prevails fully at summary judgment or at trial. However, Plaintiff’s remaining claims do
 25 not cabin Apple’s right to recover attorney’s fees on other available bases. For example, the Rules
 26 authorize recovery of attorney’s fees for frivolous actions, pleadings, and motions, as well as
 27 conduct that is intended to delay and increase the costs of litigation. *See Fed. R. Civ. P. 11(c).*
 28 Plaintiff has repeatedly pursued claims that are frivolous and have been dismissed by this Court,

1 and continues to improperly seek remedies for those dismissed claims through her remaining
2 claims. Further, she has repeatedly violated the page limit rules of this Court and continues to do
3 so despite this Court's admonitions to stop. She flatly ignores Rule 11 by littering her filings with
4 quotations that are not contained in cases, misrepresentations of the holdings of cases, and citations
5 to cases that do not exist. While there are certain leniencies afforded to a pro se plaintiff, at some
6 point the scale must tip in Apple's favor on its right to recover fees incurred defending her serial
7 frivolous motion practice and her insistence to litigate dismissed claims, which serves only to
8 impose unnecessary expense and delay resolution of this matter once and for all. Apple has properly
9 pled its right to recover attorney's fees for such issues.

10 **IV. CONCLUSION**

11 For the foregoing reasons, Apple respectfully requests the Court deny Plaintiff's Motion,
12 and leave to amend if the Court were to grant any portion of the Motion.

13 Dated: April 10, 2025

14 ORRICK, HERRINGTON & SUTCLIFFE LLP

15 By: _____ */s/ Melinda S. Riechert*
16 MELINDA S. RIECHERT
17 Attorney for Defendant
18 APPLE INC.

19
20
21
22
23
24
25
26
27
28