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21 UNITED STATES DISTRICT COURT  
22 NORTHERN DISTRICT OF CALIFORNIA

23 U.S. EQUAL EMPLOYMENT OPPORTUNITY  
24 COMMISSION,

25 Plaintiff,

26 vs.

27 IXL Learning, Inc.,

28 Defendant.

Case No.: 17-cv-02979

**JOINT CASE MANAGEMENT  
STATEMENT**

The Parties to the above-entitled action jointly submit this JOINT CASE MANAGEMENT STATEMENT pursuant to the Standing Order for All Judges of the Northern District of California dated January 17, 2017 and Civil Local Rule 16-9.

**1. Jurisdiction & Service**

This Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343

1 and 1345. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) of Title VII,  
2 42 U.S.C. §2000e-5(f)(1) and (3) and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §  
3 1981a. This action is also authorized and instituted pursuant to Section 107(a) of the ADA, 42  
4 U.S.C. §12117(a), which incorporates by reference Title VII, 42 U.S.C. §2000e-5(f)(1) and (3). No  
5 issues exist regarding subject matter jurisdiction or venue.

6 Defendant IXL Learning, Inc. (“Defendant” or “IXL”) waived service of the Complaint in  
7 accordance with Fed. R. Civ. P. 4 and filed an Answer on August 1, 2017. (ECF No. 12)

## 9 **2. Facts**

### 10 **A. Joint facts**

11 Duane, a transgender male, began working in July 2013 as a Product Analyst for IXL, an  
12 educational technology company. In July 2014 Duane notified his supervisor, David Keyes, that he  
13 needed approximately 6-8 weeks of leave for a surgery in November. IXL approved the leave. Prior  
14 to his leave IXL permitted Duane to work remotely one day per week in September/October so  
15 Duane could attend pre-operative appointments. Duane’s last day of work before his leave was  
16 October 30, 2014.

17 In December, when Duane was preparing to return to work, he asked his supervisor, Keyes,  
18 whether he could work in the office half-days and work remotely half-days due to a post-operative  
19 complication known as a fistula. IXL and Duane exchanged emails. IXL then granted Duane’s  
20 proposal of working remotely 50% of the time.

21 On December 30, 2014, Duane returned to work. That evening Duane posted a review on  
22 Glassdoor.com. Glassdoor.com is an online tool that allows jobseekers to read anonymous reviews  
23 about companies from current or past employees. IXL subscribes to Glassdoor.com to assist with  
24 talent recruitment. The review, titled “Micromanaged and problematic” stated in its entirety:  
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27 I have been working at IXL Learning full-time (More than 3 years)

28 Pros

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Easy, unchallenging work, good medical benefits, free drinks. Hours are not too crazy. The people are generally well-meaning and nice. The company isn't going anywhere right now. They play to the traditional classroom, which is good for profits. You won't have to worry about the company going under (but don't expect the profits to pass onto you, either).

#### Cons

Don't expect a challenge working here. This company sets the bar extremely high for who they hire, and then gives their smart, talented employees boring, menial work to fill the day. The CEO is overly involved in every product, every decision, every everything.

There are no politics if you fit in. If you don't—that is, if you're not a family-oriented white or Asian straight or mainstream gay person with 1.7 kids who really likes softball—then you're likely to find yourself on the outside. Treatment in the workplace, in terms of who gets flexible hours, interesting projects, praise, promotions, and a big yearly raise, is different and seems to run right along these characteristics.

There is essentially no HR knowledge or staff at this company. Know your rights when you work here, because they don't, and they don't care to learn. Most management has no idea what the word "discrimination" means, nor do they seem to think it matters.

#### Advice to Management

Choose one: listen to the ideas of a group of smart, talented employees, or micromanage a group of mediocre employees. Don't pull the bait and switch on employees who can do way better. Build a culture that encourages respect for people of all walks of life.

Duane met with Keyes on January 6, 2015 and informed Keyes that he felt discriminated against. Keyes discussed Duane's concerns with IXL's CEO, Paul Mishkin. Mishkin scheduled a meeting with Duane for January 8, 2015. On January 8, 2015, Mishkin terminated Duane's employment at IXL due to Duane's Glassdoor.com post.

Duane filed a charge of discrimination with the EEOC in March 2015 alleging Title VII and ADA violations, which was dually filed with the California Department of Fair Employment and Housing. On April 22, 2016, the EEOC issued a Letter of Determination finding reasonable cause to

1 believe that IXL retaliated against Duane in violation of Title VII and the ADA. The EEOC issued a  
2 Notice of Failure of Conciliation on July 28, 2016.

3 **B. Principal disputed facts**

4 ○ Plaintiff's disputed facts:

- 5 ■ Facts relating to whether Duane engaged in protected activity.
- 6 ■ Facts relating to whether Duane was motivated by a reasonable and good  
7 faith belief that he was opposing discriminatory employment practices.
- 8 ■ Facts relating to whether the manner of Duane's opposition was  
9 reasonable.
- 10 ■ Facts relating to IXL's decision to terminate Duane.

11 ○ Defendant's disputed facts:

12 The primary facts in dispute concern whether Duane engaged in protected activity  
13 and whether Defendant fired Duane for such protected activity. With respect to  
14 Duane's alleged protected activity, facts in dispute concern whether Duane  
15 opposed a practice made unlawful by applicable federal law, whether his actions  
16 were motivated by a reasonable good faith belief, and whether the manner of  
17 Duane's opposition was reasonable.

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20 **3. Legal Issues**

- 21 - Whether Duane's Glassdoor.com post is protected activity covered by the opposition  
22 clause of Title VII and ADA's retaliation provisions.
- 23 - Whether Defendant unlawfully retaliated against Duane.
- 24 - What, if any, legal relevance the NLRB proceedings and finding have on this case.

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26 **4. Motions**

27 Plaintiff EEOC filed an unopposed motion to continue the date of the Case Management  
28 Conference, which was granted. (ECF No. 17 and No. 18) Duane filed a Motion to Intervene as

1 Plaintiff-Intervenor in which he seeks to add additional claims against Defendant. (ECF No. 19 and  
2 No. 20) Defendant filed a response in which Defendant opposes the Motion to Intervene to the  
3 extent Duane seeks to add additional claims against Defendant. (ECF No. 22)

4 The Parties may file discovery motions, if necessary, and after complying with the local rules  
5 and the standing orders of this court. The Parties also anticipate motions for summary judgment  
6 and/or partial summary judgment on the various claims and/or defenses.

#### 7 **5. Amendment of Pleadings**

8 The Parties anticipate Adrian Scott Duane will join as Plaintiff-Intervenor to the lawsuit.  
9 The scope of permissible claims will be addressed by the intervention motion practice, noted above  
10 in Section 4. Other than the addition of a Plaintiff-Intervenor to the case, the Parties do not currently  
11 anticipate adding any claims or defenses to the pleadings.

#### 12 **6. Evidence Preservation**

13 The Parties met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and  
14 proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this  
15 action. The Parties have discussed their preservation obligations and needs and agree that  
16 preservation of potentially relevant ESI will be reasonable and proportionate. Each Party certifies  
17 that it reviewed the Guidelines Relating to the Discovery of Electronically Stored Information (“ESI  
18 Guidelines”) and the Checklist for ESI Meet and Confer.  
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#### 20 **7. Disclosures**

21 The Parties agreed to a mutual exchange of initial disclosures pursuant to Fed. R. Civ. P.  
22 26(a), which were exchanged on August 15, 2017. The Parties produced, without requiring a request  
23 for production, some documents identified in their respective Initial Disclosures.  
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#### 25 **8. Discovery**

26 The Parties have exchanged some documents and will exchange formal discovery and notice  
27 depositions. The Parties anticipate that the subjects on which discovery may be needed will include,  
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1 but are not limited to the following: Duane's employment tenure, including communications with  
2 co-workers; Defendant's policies and procedures; Defendant's subscription to and use of  
3 Glassdoor.com; Defendant's training and implementation about policies and procedures;  
4 communications between Defendant's managers regarding Duane's discrimination complaints and  
5 his Glassdoor.com post; the decision to terminate Duane; damages, including, lost wages and  
6 benefits and emotional distress; injunctive remedies; the identities of potential witnesses, including  
7 former co-workers; and Defendant's asserted factual allegations and defenses.  
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9 The Parties will conduct, serve, and respond to discovery in accordance with the Federal  
10 Rules of Civil Procedure and Local Rules. The Parties do not currently anticipate seeking  
11 modification to the proscribed discovery limitations.

12 The Parties have discussed and will continue to work in good faith to enter a Stipulated Order  
13 regarding the discovery of electronically stored information.

14 The Parties agree to conduct limited fact discovery prior to engaging in mediation. The  
15 Parties propose one round of written discovery and a maximum of four (4) depositions total. If  
16 mediation efforts are not successful, additional discovery including expert witness discovery may be  
17 necessary.  
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19 The Parties intend to submit a proposed Protective Order based on the Model Protective  
20 Order to protect confidential and proprietary and/or medical information that may be exchanged  
21 during this litigation.

22 The Parties agree to meet and confer and attempt to achieve a joint resolution regarding all  
23 discovery disputes before seeking judicial intervention. There are currently no discovery disputes.  
24

## 25 **9. Class Actions**

26 This case is not a class action.  
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1           **10. Related Cases**

2           The Parties are not aware of any active cases related to the instant action.

3           **11. Relief**

4           The EEOC seeks appropriate injunctive relief to remedy Defendant's alleged discriminatory  
5 practices. This may include, *inter alia*, employee and supervisor EEO training, improved anti-  
6 discrimination policies and practices and complaint investigation training for human resources  
7 personnel. This may also include revisions to Defendant's current policies and procedures regarding  
8 employee rights to oppose discrimination using social media and other online forums. The EEOC  
9 will seek expungement of all discipline-related documents from Duane's personnel file and a  
10 requirement that IXL provide Duane a neutral reference in response to any inquiry from prospective  
11 employers.  
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13           The EEOC also seeks monetary damages on behalf of Duane. The EEOC may seek  
14 compensatory and punitive damages on behalf of Duane pursuant to the Civil Rights Act of 1991 up  
15 to the statutory cap of \$200,000. The EEOC will also seek lost wages and benefits beyond the  
16 statutory cap.  
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18           **12. Settlement and ADR**

19           This court ordered the Parties to participate in the Court's Mediation program pursuant to  
20 ADR L.R. 6. (ECF No. 14) The Parties have previously engaged in unsuccessful informal methods  
21 of conciliation and believe that conducting limited pre-mediation fact discovery may increase the  
22 chances of a successful settlement.  
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24           **13. Consent to Magistrate Judge for All Purposes**

25           The Parties do not consent to have a Magistrate Judge conduct further proceedings including  
26 trial and entry of judgment.  
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**14. Other References**

Not Applicable

**15. Narrowing of Issues**

The Parties cannot narrow the issues.

**16. Expedited Trial Procedure**

The Parties do not believe that this case can be handled under the Expedited Trial Procedure of General Order 64, Attachment A.

**17. Scheduling**

The Parties propose that early discovery be limited as described above in Section 8E. If mediation is unsuccessful, the Parties propose the following schedule:

<b>EVENT</b>	<b>COMPLETION DATE</b>
Last day to amend pleadings	March 9, 2018
Fact Discovery Cutoff	June 8, 2018
Opening Expert Reports and Disclosures	July 13, 2018
Rebuttal Expert Reports and Disclosures	August 17, 2018
Expert Discovery Cutoff	September 14, 2018
Deadline to File Dispositive Motions	October 26, 2018
Hearing on Dispositive Motions	TBD at Court's convenience
Final Pre-trial Conference and Trial	90 days after the dispositive motions hearing

**18. Trial**

The Parties anticipate that trial will take approximately 5 to 7 court days, depending on discovery and the issues remaining in the case by the trial date. The EEOC requested a jury trial.

**19. Disclosure of Non-Party Interested Entities or Persons**

Local Civil Rule 3-15 does not apply to Plaintiff EEOC, an agency of the United States government.

Defendant filed its Certificate of Interested Entities or Persons on August 1, 2017. (ECF No. 8.) Defendant is not aware of any persons, firms, partnerships, corporations, or other entities known by Defendant to have a financial interest in the subject matter in this controversy or in a party to this

