

YOUNG BASILE

JEFFREY D. WILSON
wilson@youngbasile.com
D: 248-244-0173

YOUNG BASILE
HANLON & MACFARLANE, P.C.

3001 West Big Beaver Road
Suite 624
Troy, MI 48084

P: 248-649-3333
F: 248-649-3338
youngbasile.com

September 27, 2017

Honorable Vince Chhabria
USDC, Northern District of California
San Francisco Courthouse
Courtroom 4, 17th Floor
450 Golden Gate Avenue
San Francisco, CA 94012

**RE: U.S. Equal Employment Opportunity Commission v. IXL Learning, Inc.
Case No: 3:17-cv-02979**

Dear Judge Chhabria:

On behalf of the Defendant, IXL Learning, Inc. (“IXL”) in the above matter and pursuant to the Court’s Order regarding Supplemental Briefing (DE 30), I submit this supplemental letter brief in response to Proposed Plaintiff-Intervenor’s Notice of Motion to Intervene (DE 19) and in support of Defendant’s Opposition to Proposed Plaintiff-Intervenor’s Notice of Motion to Intervene (DE 22, “Defendant’s Opposition”).

On January 6, 2017, Proposed Plaintiff-Intervenor Adrian Scott Duane (“Intervenor”) filed his individual action against IXL. *See Adrian Scott Duane v. IXL Learning, Inc. and Paul Mishkin*, No. 3:17-CV-00078-EDL (N.D. Cal.) (the “Intervenor Action”). Following the initiation of this lawsuit by the Equal Employment Opportunity Commission (EEOC), IXL and Intervenor stipulated, pursuant to Federal Rule of Civil Procedure 41(a), to the dismissal of all claims in the Intervenor Action with prejudice. Menezes Decl., Ex. 2 (DE 22-03).

On September 19, 2017, Intervenor filed a letter with this Court, requesting that the Court consider a right-to-sue letter (the “RTS Letter”) to Intervenor from the California Department of Fair Employment and Housing (DFEH). DE 26.

A. Time-Barred

First, the RTS Letter from the DFEH makes clear that Intervenor is now time-barred from asserting claims under the California Fair Employment and Housing Act (FEHA). The RTS Letter states that Intervenor has one year to file an action under FEHA following the conclusion of the EEOC’s investigation. The EEOC issued its Determination on April 22, 2016, and found cause only on retaliation claims under Title VII and the ADA. DE 19, 3:4-6. Intervenor had one year after the issuance of the Determination to bring this FEHA claim (i.e., until April 22, 2017). Therefore, Intervenor’s Motion to Intervene to assert this FEHA claim five months after the one-year statute

Honorable Vince Chhabria
USDC, Northern District of California
September 27, 2017
Page 2

of limitations is time-barred. Cal. Gov't Code § 12965.

B. Res Judicata

Second, the RTS Letter from the DFEH makes clear that Intervenor could have, but did not, assert a FEHA claim in the Intervenor Action filed in January 2017. The Court in the Intervenor Action dismissed the case with prejudice on June 27, 2017. Menezes Decl., Ex. 2 (DE 22-03). Res judicata bars parties from “relitigating issues that were or could have been raised” in a prior action. *Allen v. McCurry*, 449 U.S. 90, 94 (1980). Intervenor’s FEHA claim proposed in his Proposed Complaint in Intervention could have been raised in the prior litigation. Marek Decl., Ex. A (DE 20-01). Therefore, he is barred from bringing the FEHA claim in any subsequent action against IXL.

For the reasons stated herein and in Defendant’s Opposition, the Court should deny the addition of claims alleged in Intervenor’s Motion to Intervene.

Very truly yours,

/s/ Jeffrey D. Wilson

Jeffrey D. Wilson

Honorable Vince Chhabria
USDC, Northern District of California
September 27, 2017
Page 3

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on September 27, 2017, he caused the foregoing to be filed with the Court by electronic filing protocols, and that same will therefore be electronically served upon all attorneys of record registered with the Court's ECF/CM system.

By: /s/ Jeffrey D. Wilson
Jeffrey D. Wilson