

THE MAREK LAW FIRM

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September 18, 2017

The Honorable Vince Chhabria  
San Francisco Courthouse, Courtroom 4-17<sup>th</sup> Floor  
450 Golden Gate Avenue  
San Francisco, California 94102

Re: *EEOC and Adrian Scott Duane v. IXL Learning Inc.; 17-cv-02979 (VC)*

Dear Judge Chhabria:

On behalf of Intervenor-Claimant Adrian Scott Duane, I submit this letter pursuant to FRCP Rule 28(j) and Local Rule 7-3(d) seeking the Court's permission to supplement the record on Duane's Motion to Intervene. Duane asks the Court to consider the California Department of Fair Employment and Housing ("DFEH") right-to-sue letter (attached hereto as "Exhibit A"), which I only became aware of on or about September 17, 2017.<sup>1</sup>

While IXL consented to Duane's right to intervene with respect to the EEOC's claims, IXL opposed Duane's additional claim under the Fair Employment and Housing Act ("FEHA").

Among other reasons for its opposition, IXL argued that Duane "does not have a right-to-sue letter from ... the DFEH." Opposition, p. 7.

On September 17, 2017, the EEOC sent me a copy of the DFEH right-to-sue letter that had been issued to Duane. The EEOC had produced this document to IXL (control number EEOC\_00046) as part of its initial document production made on August 15, 2017.

Duane's FEHA claim was tolled while the EEOC investigated the matter. See the attached right-to-sue letter ("Pursuant to Government Code section 12965, subdivision (d)(1), this one-year period [to commence a claim under FEHA] will be tolled during the pendency of the EEOC's investigation of your complaint.")

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<sup>1</sup> In August 2016, I left the law firm of Liddle & Robinson, LLP, where I had previously worked while representing Duane. It is possible that confusion caused by this move resulted in my not being aware of the right-to-sue letter.

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IXL's argument is moot because of this document. See *EEOC v. Giumarra Vineyards Corp.*, 2010 WL 3220387, \*3 (E.D.Ca. 2010) (a copy of this case is attached as Exhibit C to the September 12, 2017 Declaration of David Marek accompanying the Reply) (where the defendant argued the plaintiffs' motion to intervene should be denied because they "have not requested right-to-sue letters," the Court ruled that the argument was "moot" because plaintiffs received the right-to-sue letter "one week after Defendant filed its opposition.").

Respectfully Submitted,

/s//

David Marek

Cc: Ami Sanghvi, Esq. (without attachments)  
Jeffrey D. Wilson, Esq. (without attachments)

**EXHIBIT A**

**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

EEOC Number: 520-2015-02025C  
Case Name: Adrian S. Duane vs. IXL LEARNING, INC.  
Filing Date: May 13, 2015

**NOTICE TO COMPLAINANT AND RESPONDENT**

This is to advise you that the above-referenced complaint is being dual filed with the California Department of Fair Employment and Housing (DFEH) by the U.S. Equal Employment Opportunity Commission (EEOC). The complaint will be filed in accordance with California Government Code section 12960. This notice constitutes service pursuant to Government Code section 12962.

The EEOC is responsible for the processing of this complaint and the DFEH will not be conducting an investigation into this matter. Please contact EEOC directly for any discussion of the complaint or the investigation.

**NOTICE TO COMPLAINANT OF RIGHT-TO-SUE**

This letter is also your Right to Sue notice. This Right-To-Sue Notice allows you to file a private lawsuit in State court. According to Government Code section 12965, subdivision (b), you may bring a civil action under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The lawsuit may be filed in a State of California Superior Court. Government Code section 12965, subdivision (b), provides that such a civil action must be brought within one year from the date of this notice. Pursuant to Government Code section 12965, subdivision (d)(1), this one-year period will be tolled during the pendency of the EEOC's investigation of your complaint. You should consult an attorney to determine with accuracy the date by which a civil action must be filed. This right to file a civil action may be waived in the event a settlement agreement is signed.

If you have questions about the right to file under federal law, please contact the EEOC using the contact information below.

EEOC Northern California  
450 Golden Gate Ave 5-West  
PO Box 36025  
San Francisco, CA 94102  
(415) 522-3000

EEOC Southern California  
255 East Temple Ste., 4<sup>th</sup> Floor  
Los Angeles, CA 90012  
(213) 894-1100