

# 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 21, 2017

Honorable Vince Chhabria  
USDC, Northern District of California  
San Francisco Courthouse  
Courtroom 4, 17<sup>th</sup> 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, I submit this letter in response to Mr. Marek's correspondence filed with this Court on September 19, 2017 (DE 26) (the "Intervenor Letter"). The Intervenor Letter included a Right-to-Sue Letter ("RTS Letter") from the California Department of Fair Employment and Housing. Given the new evidence submitted by Intervenor-Claimant Adrian Scott Duane ("Intervenor") in the Intervenor Letter, IXL requests leave to file a short supplemental brief.

Specifically, Intervenor appears to argue that IXL's opposition is moot because of the RTS Letter. To the contrary, the RTS Letter now before the Court demonstrates as a matter of law that Intervenor's claims are barred by the doctrine of res judicata.

Intervenor filed his previous individual action against IXL on January 6, 2017. See *Adrian Scott Duane v. IXL Learning, Inc. and Paul Mishkin*, No. 3:17-CV-00078-EDL (N.D. Cal.) (the "Intervenor Action"). Although the RTS Letter is not dated, the RTS Letter clearly was sent sometime in 2015 shortly after Duane filed the Charge. Thus, Intervenor's FEHA claim indisputably could have been raised in the Intervenor Action because the California Department of Fair Employment and Housing had issued the RTS Letter. The dismissal of the Intervenor Action with prejudice bars Intervenor from bringing such claims in this case. See *Allen v. McCurry*, 449 U.S. 90, 94 (1980) (Under the principles of res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.).

Honorable Vince Chhabria  
USDC, Northern District of California  
September 21, 2017  
Page 2

The unpublished case relied on by Intervenor is not relevant to IXL's res judicata arguments. In *E.E.O.C. v. Giumarra Vineyards Corp.*, No. 1:09-CV-02255-OWW, 2010 WL 3220387, at \*2 (E.D. Cal. Aug. 13, 2010), the defendants did not assert the defense of res judicata.

While IXL does not object to the Court's consideration of the RTS Letter, IXL requests leave to file a five-page supplemental brief to adequately address on the public docket the legal impact of this new evidence prior to the October 12, 2017 hearing.

Very truly yours,

*/s/ Jeffrey D. Wilson*

Jeffrey D. Wilson

JDW/NRM

Honorable Vince Chhabria  
USDC, Northern District of California  
September 21, 2017  
Page 3

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that on September 21, 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