

THE MAREK LAW FIRM

David Marek, Esq.
The Marek Law Firm
228 Hamilton Ave.
Palo Alto, CA 94301

david@marekfirm.com
917-721-5042

September 22, 2017

The Honorable Vince Chhabria
San Francisco Courthouse, Courtroom 4-17th 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 in opposition to Defendant IXL Learning Inc.'s ("IXL") request by letter dated September 21, 2017 to file additional briefing on its opposition to Duane's Motion to Intervene (the "Opposition").

IXL argues it should be permitted to submit an supplemental brief because of "the new evidence submitted by Intervenor-Claimant ... in the Intervenor Letter." The "new evidence" IXL refers to is the DFEH right-to-sue letter that Duane became aware of on September 17 and IXL became aware of on August 15.

IXL should not be permitted to supplement its Opposition because IXL had been aware of the DFEH right-to-sue letter for nearly three weeks *before* it filed its Opposition (in which it represented to the Court that Duane "does not have a right-to-sue letter from ... the DFEH." Opposition, p. 7). Accordingly, the DFEH right-to-sue letter is not "new evidence." IXL had the opportunity to make arguments based on the fact that the DFEH had issued the right-to-sue letter, but it elected not to do so.

Further, there is no evidence that this letter was sent to Duane or counsel before September 17, 2017. The letter is not dated, and there is not a cover letter indicating it was sent out before it was produced to IXL on August 15.

In any event, the existence of the right-to-sue letter has not impact on IXL's *res judicata* argument. That argument must fail because Duane sought to stay the Duane action against IXL to promote judicial efficiency, and IXL refused this request and the Court indicated it would not

THE MAREK LAW FIRM

consider it. Only after IXL refused to stay the matter (and after the EEOC already commenced this matter) did Duane and IXL agree to dismiss the Duane action to further promote efficiency.

Although the issue of the stay was raised in Duane's initial Motion (including attaching the correspondence making this request to IXL), IXL elected to ignore this issue in its Opposition. IXL should not be given an opportunity for a redo on its Opposition brief when all of the relevant information and documents were in its possession when it submitted its Opposition on September 5.

Respectfully Submitted,

/s//

David Marek

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