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17 Attorneys for Defendants

18 IXL Learning, Inc.

19 UNITED STATES DISTRICT COURT  
20 NORTHERN DISTRICT OF CALIFORNIA

21 \_\_\_\_\_ : Case No.: 3:17-cv-02979-VC

22 U.S. EQUAL EMPLOYMENT OPPORTUNITY :  
23 COMMISSION, :

24 Plaintiff, :

25 and :

26 ADRIAN SCOTT DUANE, :

27 Plaintiff-Intervenor, :

28 v. :

IXL LEARNING, INC., :

Defendant. :

**ANSWER TO COMPLAINT IN  
INTERVENTION, AFFIRMATIVE  
DEFENSES AND RELIANCE ON JURY  
DEMAND**

Defendant IXL Learning, Inc. (“IXL” or “Defendant”), by and through its undersigned counsel, hereby submits its Answer to Complaint in Intervention, Affirmative Defenses, and Reliance on Jury Demand as follows:

**NATURE OF THE ACTION**

1  
2 Defendant denies that it engaged in the unlawful employment practice of retaliation in violation of  
3 Title VII of the Civil Rights Act of 1964, Title V of the Americans with Disabilities Act, Title I of the  
4 Civil Rights Act of 1991, or the California Fair Employment and Housing Act. Defendant further denies  
5 that it discriminated against its former employee, Plaintiff-Intervenor Adrian Scott Duane.

**JURISDICTION AND VENUE**

6  
7 1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367. Section 1367 provides  
8 that, “Such supplemental jurisdiction shall include claims that involve joinder or intervention of additional  
9 parties.”

10 **ANSWER:** Admit.

11 2. Venue is proper in the United States District Court for the Northern District of California  
12 because the employment practices occurred in Defendant’s headquarters in San Mateo, California.

13 **ANSWER:** Defendant admits that venue is proper and that its principal place of business is located at  
14 777 Mariners Island Boulevard, Suite 600, San Mateo, California 94404, and denies the remaining  
15 allegations.

**PARTIES**

16  
17 3. Plaintiff Equal Employment Opportunity Commission (EEOC) is the federal agency  
18 charged with the administration, interpretation, and enforcement of Title VII and Title I of the ADA.

19 **ANSWER:** Admit.

20 4. Plaintiff-Intervenor, Adrian Scott Duane, is a transgender man with an undergraduate  
21 degree from in Mathematics from Carleton College, and a Ph.D. in Mathematics from the University of  
22 California, San Diego. He resides in Oakland, California.

23 **ANSWER:** Defendant admits only that it was not aware that Duane was a transgender man. Defendant  
24 further admits that it lacks knowledge or information sufficient to form a belief as to the truth of the  
25 remaining allegations, and therefore, they are denied.

26 5. At all relevant times, Defendant IXL Learning, Inc. (IXL) has been headquartered in San  
27 Mateo, California and has had another office in North Carolina.

28 **ANSWER:** Admit.

**ADMINISTRATIVE PROCEDURES**

1  
2 6. Duane has exhausted all of his administrative remedies required to bring his claims under  
3 Title VII, ADA and FEHA.

4 **ANSWER:** Denied.

5 7. On or about March 17, 2015, Duane filed a timely charge of discrimination with the EEOC  
6 alleging that IXL discriminated against him in violation of the retaliation provisions of Title VII, the ADA,  
7 and FEHA.

8 **ANSWER:** Defendant admits only that Duane filed a Charge of Discrimination with the EEOC and  
9 denies the remaining allegations.

10 8. On April 22, 2016, the EEOC issued a Letter of Determination finding reasonable cause to  
11 believe that IXL violated the retaliation provisions of Title VII and the ADA.

12 **ANSWER:** Defendant admits only that the EEOC issues a Letter of Determination on or around April  
13 22, 2016, and denies the remaining allegations. Defendant further admits that the EEOC determined that  
14 IXL did allow Duane to work from home for half of his work days upon his return from leave after surgery  
15 and that IXL did not deny Duane a reasonable accommodation. Defendant further admits that the EEOC  
16 determined that IXL did not discriminate against Duane because he is transgender and that IXL did not  
17 discharge Duane because is transgender.

18 9. On July 28, 2016, the EEOC issued a Notice of Failure of Conciliation.

19 **ANSWER:** Defendant states that the EEOC sent Defendant a letter dated July 28, 2016 and denies the  
20 remaining allegations.

21 10. All conditions precedent to the initiation of this lawsuit have been fulfilled.

22 **ANSWER:** Denied.

23 **FACTUAL ALLEGATIONS**

24 11. Duane, a transgender man, began working for IXL as a Product Analyst in July 2013.

25 **ANSWER:** Defendant admits that Duane joined IXL on or around July 2013 as a product analyst.  
26 Defendant further admits that it was not aware that Duane was a transgender man.

1           12.     During his employment, Duane discussed with coworkers his impressions about the culture  
2 at IXL being unwelcoming to employees who are not White or Asian American, who are not able-bodied,  
3 and who do not fit into neat categories of gender identity, orientation, and expression.

4 **ANSWER:**    Defendant lacks knowledge or information sufficient to form a belief as to the truth of the  
5 allegations, and therefore, they are denied.

6           13.     Throughout his employment, employees probed Duane with inappropriate questions about  
7 his gender identity and orientation. On at least one occasion, after seeing scars on Duane's chest, an  
8 employee asked another co-worker if Duane used to be a girl. Similarly, upon learning that Duane was in  
9 a relationship with a woman, a co-worker asked Duane if it was his first time dating a woman.

10 **ANSWER:**    Defendant lacks knowledge or information sufficient to form a belief as to the truth of the  
11 allegations, and therefore, they are denied.

12           14.     IXL provided employees with unlimited sick leave as a benefit of employment.

13 **ANSWER:**    Admit.

14           15.     In July 2014 Duane notified his supervisor, David Keyes, about the need for approximately  
15 6-8 weeks of leave for a surgery in November.

16 **ANSWER:**    Defendant admits that in July or August of 2014, Duane advised his supervisor that he was  
17 going to need an extended medical disability leave because he was having surgery and would need  
18 approximately two months off later in the year. Duane never told his supervisor that he was either a  
19 cisgender or a transgender, and at no time did Duane's supervisor ask Duane what his specific medical  
20 procedures were that related to his disability leave. Defendant denies the remaining allegations.

21           16.     In September 2014, IXL approved Duane's disability leave and processed the necessary  
22 paperwork for California State Disability Insurance benefits.

23 **ANSWER:**    Defendant admits only that it approved Duane's disability leave and processed the  
24 necessary paperwork for California State Disability Insurance Benefits.

25           17.     On October 3, 2014 Duane emailed his team members that he would begin a two month  
26 leave of absence in November for a surgery and that he wished to keep the details private.

27 **ANSWER:**    Admit.  
28

1 18. On at least one other prior occasion that Duane knew of, IXL had disclosed confidential  
2 health information about an IXL employee.

3 **ANSWER:** Denied.

4 19. For approximately six weeks prior to his leave, IXL permitted Duane to work remotely so  
5 he could attend weekly pre-operation appointments.

6 **ANSWER:** Admit.

7 20. Duane started approximately eight weeks of approved short-term disability leave on  
8 October 30, 2014 in order to undergo and recover from gender confirmation surgery.

9 **ANSWER:** Defendant admits that Duane started approximately eight weeks of approved disability  
10 leave on or around October 30, 2014. Defendant further admits that it was not aware that Duane's  
11 disability leave was to undergo and recover from gender confirmation surgery.

12 21. At the conclusion of his leave, Duane developed post-operative complications, which  
13 required rest in order to effectuate a full recovery, and made it challenging to be out of his home for long  
14 periods of time.

15 **ANSWER:** Defendant admits only that on or around December 19, 2014, Duane informed his  
16 supervisor that he had developed a non-serious condition which he believed would make it challenging to  
17 be out of the house for long periods of time and denies the remaining allegations. Defendant further admits  
18 that, also around this time, Duane started to look for a new job with a different employer.

19 22. Duane requested a 50% remote work arrangement for his first few weeks back at work in  
20 order to accommodate his recovery. Duane's manager resisted providing the accommodation and instead  
21 suggested that Duane take additional leave until he was able to return.

22 **ANSWER:** Defendant admits only that Duane asked whether his supervisor would be open to Duane  
23 working half days in the office and half days at home for the first few weeks upon his return. Duane's  
24 supervisor responded by email that he would prefer that Duane be in the office because Duane was more  
25 productive in the office. Duane's supervisor asked if there was anything IXL could do to accommodate  
26 Duane so he could work in the office. Duane's supervisor also told Duane that it would be completely fine  
27 for Duane to extend his leave to aid in his recovery. Defendant denies the remaining allegations.

28

1 23. Duane informed IXL via email that he had consulted with an employment attorney who  
2 advised that remote work requests because of a medical condition qualified as a reasonable  
3 accommodation under the Americans with Disabilities Act.

4 **ANSWER:** Admit but Defendant further admits that Duane’s email proposed working remotely 50  
5 percent of the time with metrics in place to monitor his progress and productivity to IXL’s satisfaction,  
6 stating in part as follows:

7 My doctor is happy to provide written documentation, and actually  
8 suggested as much remote time as possible so that things heal quickly,  
9 particularly the complication that has arisen. I completely understand your  
10 concerns about remote work and productivity, and I also understand that  
11 your primary responsibility is to make sure the math team meets all of its  
12 goals. But the bottom line is, I want to return to work, and I am certain I can  
13 perform the essential functions of my job while working remotely 50%. I’d  
14 like to find a solution under which I return on the 30<sup>th</sup> with this  
15 accommodation, or something very close to it. I suggest that we find some  
16 metrics that we can put in place so that you can monitor my progress to your  
17 satisfaction. I’d also suggest making all office time in the morning, so that  
18 you’re sure to always have a chance to catch me in person to let me know  
19 what you’d like prioritized, etc. If there’s anything else you’d like to  
20 include, such as weekly productivity review, I’m happy to do that as well.

21 24. Keyes immediately forwarded Duane’s December 23, 2014 email to Maricela Prado and  
22 Lenore Ockerberg, IXL human resources representatives. On or about December 23, 2014, Duane’s  
23 December 23, 2014 email was also forwarded to Paul Mishkin, IXL’s CEO, and then shortly after  
24 forwarding this email Keyes discussed Duane’s allegations with Mishkin.

25 **ANSWER:** Denied.

26 25. On December 29, 2014, Duane provided a note from his surgeon supporting his reasonable  
27 accommodation request. The surgeon advised that Duane work remotely for at least four more weeks for  
28 postoperative healing. This note was on the letterhead of Brownstein & Crane Surgical Services and  
included the website [www.brownsteincrane.com](http://www.brownsteincrane.com). Brownstein & Crane’s websites immediately identifies  
itself as “Gender Surgery in San Francisco.” The entire website announces the medical practice’s specialty  
of providing transgender surgeries.

**ANSWER:** Defendant admits only that Duane voluntarily provided a note from his surgeon dated  
December 29, 2014, which advised that Duane be allowed to work remotely for at least four more weeks.

1 Defendant further admits that it was not aware that Duane was a transgender man and denies the remaining  
2 allegations.

3 26. After Duane’s self-advocacy, IXL relented and allowed Duane to work from home 50% of  
4 the time.

5 **ANSWER:** Denied. Defendants state that IXL granted Duane’s proposal of working remotely 50% of  
6 the time with metrics in place to monitor Duane’s progress and productivity, stating the following in  
7 response to Duane’s email:

8 Based on your doctor’s recommendation, it sounds like reasonable  
9 accommodation in your case is to set up a part time remote working  
10 situation. It would be great if you could provide written documentation for  
11 this – and we can move forward with this plan. I’m happy to come up with  
12 performance goals and a progress monitoring plan for you as well. Having  
13 your office time be in the morning sounds great to me – thanks for that  
14 suggestion!

15 27. IXL presented Duane with a detailed remote work plan upon Duane’s return to work on  
16 December 30, 2014. That day Duane learned that at least two other employees were permitted to work  
17 remotely between 50% and 100% of the time and were not subject to such a detailed remote work  
18 arrangement. Duane understood that these employees were cisgender, heterosexual, and non-disabled.

19 **ANSWER:** Denied.

20 28. That evening Duane posted a message on Glassdoor.com, a job recruiting and ratings  
21 website, which stated, in relevant part: “There are no politics if you fit in. If you don’t-that is, if you’re  
22 not a family-oriented white or Asian straight or mainstream gay person with 1.7 kids who really likes  
23 softball – then you’re likely to find yourself on the outside. Treatment in the workplace, in terms of who  
24 gets flexible hours, interesting projects, praise, promotions, and a big yearly raise, is different and seems  
25 to run right along these characteristics.” Duane also posted “[m]ost management do not know what the  
26 word ‘discrimination’ means, nor do they seem to think it matters.”

27 **ANSWER:** Defendant admits that Duane posted a review on December 30, 2014 on Glassdoor.com,  
28 titled “Micromanaged and problematic.” Defendant further admits that the review states in its entirety:

1 I have been working at IXL Learning full-time (more than 3 years)

2 Pros

3 Easy, unchallenging work, good medical benefits, free drinks. Hours are not  
4 too crazy. The people are generally well-meaning and nice.

5 The company isn't going anywhere right now. They play to the traditional  
6 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).

7 Cons

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

11 There are no politics if you fit in. If you don't—that is, if you're not a  
12 family-oriented white or Asian straight or mainstream gay person with 1.7  
13 kids who really likes softball—then you're likely to find yourself on the  
14 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.

15 There is essentially no HR knowledge or staff at this company. Know your  
16 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.

17 Advice to Management

18 Choose one: listen to the ideas of a group of smart, talented employees, or  
19 micromanage a group of mediocre employees. Don't pull the bait and  
20 switch on employees who can do way better.

21 Build a culture that encourages respect for people of all walks of life.

22 Duane also checked the following: "Doesn't recommend," "Neutral Outlook," and "Disapproves of CEO."

23 29. During Duane's employment at IXL, IXL encouraged employees to use Glassdoor – a  
24 service that IXL paid for and closely monitored – as a means to communicate with employees, potential  
25 employees, and management. For instance, by email dated February 24, 2014, Prado instructed IXL  
26 employees, including Duane, to "take a moment to login to Glassdoor.com and post some comments about  
27 your work experience." At IXL events, CEO Mishkin had also orally instructed IXL employees to do the  
28 same.

1 **ANSWER:** Defendant admits only that on February 24, 2014, Prado sent an email to undisclosed  
2 recipients and denies the remaining allegations.

3 30. As a result of IXL's direct encouragement to do so, Duane had posted a comment about  
4 IXL in the past, and he was aware that the Company reviewed the site.

5 **ANSWER:** Defendant admits only that Duane posted a review on or around September 11, 2013 on  
6 Glassdoor.com, titled "Nice place to work." Defendant further admits that this review states in its entirety:

7 I have been working at IXL Learning full-time (less than an year)

8 Pros

9 Coworkers are smart and generally upbeat and open to collaboration.

10 Benefits are fantastic. Best health insurance I've ever had. Dental and  
11 vision too.

12 Salary is pretty good -- though it sounds better before you move to the Bay  
13 Area. Cost of living is -steep-.

14 Stock options -- and since the company has been growing consistently  
15 over the past ~10 years, these options are probably not meaningless.

16 Flexible hours. Management is generally chill about when you come in.  
17 No one is sitting behind you watching the clock to make sure you've spent  
a full day there (at least on the software/product development side).

18 Working on a good product. The site is really slick, well-designed, and  
19 mathematically correct.

20 Transparency. A regular all-company meeting is held where the CEO,  
21 Paul, takes questions and gives an overview of what's going on. I don't  
feel like I'm in the dark about any company operations.

22 Cons

23 The commute from anywhere fun to live sucks. I didn't move to the Bay  
24 to live in San Mateo. In the peak of rush hour, it takes ~45 min from SF,  
25 55 from Oakland, over an hour from Berkeley. A shuttle like Google has  
would be great, but the company is way too small for that.

26 Salary is a bit lower than other tech companies.

27 It's quiet in the office. I wish people would talk more.  
28

1 Hours are slightly more than advertised in the interview, especially right  
2 before a product release. But, generally, the hours are better compared to  
3 other tech companies.

4 The company's bottom line is, of course, most important. The product is  
5 designed for a mainstream audience. I wish they would address concerns  
6 of kids in certain minorities -- for example, think about how to make the  
7 site friendly to kids with autism or print-related disabilities.

8 Duane also checked the following: "Recommends," "Positive Outlook," and "Approves of CEO."  
9 Defendant denies the remaining allegations.

10 31. On January 6, 2015, Duane directly reported, in a meeting with Keyes, his concerns about  
11 experiencing discrimination in the workplace. Keyes promised to alert the CEO about Duane's complaints.

12 **ANSWER:** Defendant admits only that Duane and his supervisor met on January 6, 2015 and that  
13 Duane told his supervisor that he was unhappy with some of his work assignments and felt that his ideas  
14 were not really listened to. Duane further told his supervisor that he was upset at how Defendant handled  
15 his return from disability leave and his disability accommodation and felt that IXL had discriminated  
16 against him by not immediately approving his remote work suggestion. Duane's supervisor informed  
17 Duane that he would pass Duane's concerns to upper management, including IXL's CEO. Defendant  
18 denies the remaining allegations.

19 32. On January 7, 2015, CEO Mishkin emailed Duane to set up a meeting for January 8, 2015  
20 to discuss his discrimination complaints.

21 **ANSWER:** Admit.

22 33. Also on or about January 7, 2015, HR Manager Maricelo Prado allegedly discovered  
23 Duane's Glassdoor.com posting and forwarded it to CEO Mishkin. Although the posting was anonymous,  
24 IXL suspected that Duane had written it.

25 **ANSWER:** Admit.

26 34. On January 8, 2015, Duane met with CEO Mishkin and outlined the concerns he had about  
27 discrimination.

28 **ANSWER:** Defendant admits that on January 8, 2015, Duane met with CEO Mishkin, during which  
Duane discussed his concerns about his medical leave, disability issues, and other topics.

1 35. During the meeting, CEO Mishkin confronted Duane about the Glassdoor.com post. After  
2 confirming that Duane had written the post, CEO Mishkin terminated Duane's employment.

3 **ANSWER:** Denied.

4 36. Mishkin had decided to terminate Duane's employment before the January 8 meeting.  
5 When the meeting ended, and Duane returned to his work station, he had become aware that IXL had  
6 packed and removed his belongings while he was in the January 8 meeting with Mishkin.

7 **ANSWER:** Denied.

8 37. IXL claims that the reason for terminating Duane was his December 30, 2014 post on  
9 Glassdoor.com.

10 **ANSWER:** Admit.

11 **FIRST CAUSE OF ACTION**  
12 **(Violation of Title VII)**

13 38. Duane repeats and realleges the allegations contained herein.

14 **ANSWER:** Defendant incorporates by reference the above responses as though fully set forth herein.

15 39. Duane was an employee under Title VII, 42 U.S.C. § 2000(e)(f).

16 **ANSWER:** Admit.

17 40. IXL has at all relevant times engaged in industry affecting commerce within the meaning  
18 of Section 701(h) of Title VII, 42 U.S.C. § 2000(e)(h).

19 **ANSWER:** Admit.

20 41. IXL has employed well over 15 people for at least 20 calendar weeks in the current or  
21 proceeding year, and is therefore an employer under 42 U.S.C. § 2000(e)(b).

22 **ANSWER:** Admit.

23 42. As alleged herein, IXL retaliated against Duane in violation of Title VII by terminating his  
24 employment for engaging in legally protected employment activities by opposing IXL's discrimination  
25 when he reported this discrimination to his manager and when he posted on Glassdoor.

26 **ANSWER:** Denied.

1 43. As a direct and proximate result of IXL's violation of Title VII, Duane suffered actual  
2 damage, including but not limited to losses in compensation and benefits, humiliation, emotional distress,  
3 and loss of enjoyment of life.

4 **ANSWER:** Denied.

5 44. IXL's unlawful actions were intentional, willful, malicious, and/or done with reckless  
6 disregard for Duane's rights.

7 **ANSWER:** Denied.

8 45. Duane also seeks an award of punitive damages for IXL's malicious and reckless conduct,  
9 as described herein, in amounts to be determined at trial.

10 **ANSWER:** Denied.

11 **SECOND CAUSE OF ACTION**  
12 **(Violation of ADA)**

13 46. Duane repeats and realleges the allegations contained herein.

14 **ANSWER:** Defendant incorporates by reference the above responses as though fully set forth herein.

15 47. Duane is an employee under the ADA, 42 U.S.C. § 12111(4).

16 **ANSWER:** Admit.

17 48. IXL is an employer under the ADA, 42 U.S.C. §§ 12111(5) and (7).

18 **ANSWER:** Admit.

19 49. As alleged herein, Duane requested an accommodation under the ADA. After IXL initially  
20 refused Duane's request for an accommodation, Duane opposed IXL's employment practice by engaging  
21 in legally protected employment activities, including by publicly posting his opposition to IXL's practices  
22 on Glassdoor.

23 **ANSWER:** Denied.

24 50. As alleged herein, IXL violated the ADA by terminating Duane's employment for  
25 engaging in legally protected employment activities by opposing IXL's discrimination and failure to  
26 accommodate when he complained about IXL's conduct to his manager and when he posted on Glassdoor.

27 **ANSWER:** Denied.

1 51. As a direct and proximate result of IXL's violation of the ADA, Duane suffered actual  
2 damage, including not limited to losses in compensation and benefit, humiliation, emotional distress, and  
3 loss of enjoyment of life.

4 **ANSWER:** Denied.

5 52. IXL's unlawful actions were intentional, willful, malicious, and/or done with reckless  
6 disregard for Duane's rights.

7 **ANSWER:** Denied.

8 53. Duane also seeks an award of punitive damages for IXL's malicious and reckless conduct,  
9 as described herein, in amounts to be determined at trial.

10 **ANSWER:** Denied.

11 **THIRD CAUSE OF ACTION**  
12 **(Violation of FEHA Gov. Code § 12940(h) and (m))**

13 54. Duane repeats and realleges the allegations contained herein.

14 **ANSWER:** Defendant incorporates by reference the above responses as though fully set forth herein.

15 55. Government Code § 12940(h) provides that it is unlawful to retaliate against a person  
16 "because the person has opposed any practice forbidden under [Government Code §§ 12900 through  
17 12966] . . . "

18 **ANSWER:** Defendant admits only that Government Code § 12940(h) states that it is an unlawful  
19 employment practice for an employer to "discharge, expel, or otherwise discriminate against any person  
20 because the person has opposed any practices forbidden under this part . . ." and denies the remaining  
21 allegations.

22 56. Duane is a "person" under Gov. Code § 12925(d).

23 **ANSWER:** Admit.

24 57. IXL is an "employer" under Gov. Code § 12926(d).

25 **ANSWER:** Admit.

26 58. As alleged herein, IXL violated FEHA by terminating Duane's employment for opposing  
27 IXL's employment practices forbidden under FEHA, including his opposition to IXL's discriminatory  
28 employment practices and his opposition to IXL's failure to accommodate. Duane opposed these practices

1 by engaging in legally protected employment activities, including complaining to his manager in email  
2 and in a meeting, and publicly posting his opposition on Glassdoor.

3 **ANSWER:** Denied.

4 59. IXL's conduct described herein constitutes a willful violation Gov. Code § 12940(h) and  
5 (m).

6 **ANSWER:** Denied.

7 60. As a proximate result of IXL's violation of the FEHA, Duane has suffered substantial  
8 losses, including lost back pay with prejudgment interest, in amounts to be determined at trial, and other  
9 affirmative relief necessary to eradicate the effects of IXL's unlawful employment practices, including  
10 attorneys' fees and costs.

11 **ANSWER:** Denied.

12 61. Duane also seeks an award of compensation for past and future nonpecuniary losses  
13 resulting from the unlawful retaliation complained of herein, including emotional pain, suffering,  
14 inconvenience, loss of enjoyment of life, and humiliation.

15 **ANSWER:** Denied.

16 62. Duane also seeks an award of punitive damages for IXL's malicious and reckless conduct,  
17 as described herein, in amounts to be determined at trial.

18 **ANSWER:** Denied.

19 **AFFIRMATIVE DEFENSES**

20 1. Plaintiff-Intervenor's Complaint in Intervention, in whole and in part, fails to state a claim  
21 against Defendant upon which relief can be granted.

22 2. Plaintiff-Intervenor is barred, in whole or in part, because all of Defendant's actions or  
23 inactions concerning Duane complied with all relevant and applicable laws and were based on legitimate,  
24 non-discriminatory, and non-retaliatory reasons, and neither Duane's alleged disability nor any other  
25 protected characteristic was a motivating, determinative, or any factor in Defendant's actions and/or  
26 inactions with regard to Duane.

27 3. Plaintiff-Intervenor's claims fail because Plaintiff-Intervenor has unreasonably delayed  
28 pursuing a right of claim in a way that prejudices the Defendant.

1 4. Plaintiff-Intervenor's claims are barred, in whole or in part, by Duane's failure to mitigate  
2 his damages, if any, as required by law.

3 5. Plaintiff-Intervenor's claims are barred, in whole or in part, by the applicable statute of  
4 limitations.

5 6. Plaintiff-Intervenor's claims for damages or other relief are barred by the doctrines of  
6 waiver, laches, estoppel, res judicata, issue preclusion, and/or claim preclusion.

7 7. This Court lacks jurisdiction because Plaintiff-Intervenor's claims are preempted by the  
8 National Labor Relations Act.

9 Defendant reserves the right to amend its Affirmative Defenses.

10 **RELIANCE ON JURY DEMAND**

11 Defendant hereby relies upon the Jury Demand filed by Plaintiff-Intervenor.

12  
13  
14 Dated: January 11, 2018

Respectfully submitted,

**YOUNG BASILE HANLON &  
MACFARLANE, P.C.**

15  
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17  
18  
19 -and-

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22  
23 Attorneys for Defendant  
IXL Learning, Inc.

