

1 ROBERTA STEELE, SBN 188198 (CA)  
2 MARCIA L. MITCHELL, SBN 18122 (WA)  
3 AMI SANGHVI, SBN 4407672 (NY)  
4 U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
5 San Francisco District Office  
6 The Phillip Burton Federal Building  
7 450 Golden Gate Avenue, 5 West  
8 P.O. Box 36025  
9 San Francisco, CA 94102  
10 Telephone No. (415) 522-3071  
11 [ami.sanghvi@eoc.gov](mailto:ami.sanghvi@eoc.gov)

12 *Attorneys for Plaintiff EEOC*

13 DAVID MAREK, SBN 290686  
14 THE MAREK LAW FIRM, INC.  
15 228 Hamilton Avenue  
16 Palo Alto, California 94301  
17 Telephone No. (917) 721-5042  
18 [david@marekfirm.com](mailto:david@marekfirm.com)

19 *Attorney for Plaintiff-Intervenor*

20 JEFFREY D. WILSON (PRO HAC VICE)  
21 NATASHA R. MENEZES (PRO HAC VICE)  
22 YOUNG BASILE HANDLON & MACFARLANE, PC  
23 3001 W. Big Beaver Road, Suite 624  
24 Troy, MI 48084  
25 Telephone No. (248) 649-3333  
26 [wilson@youngbasile.com](mailto:wilson@youngbasile.com)  
27 [menezes@youngbasile.com](mailto:menezes@youngbasile.com)

28 *Attorneys for Defendant IXL Learning, Inc.*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

and

Case No.: 3:17-cv-02979-VC

**SECOND JOINT CASE  
MANAGEMENT STATEMENT**

1 ADRIAN SCOTT DUANE,

2  
3 Plaintiff-Intervenor,

4 vs.

5 IXL LEARNING, INC.,

6 Defendant.  
7

Date: March 20, 2018

Time: 2:30 PM

Judge: Honorable Vincent Chhabria

BY TELEPHONE

8  
9 The parties to the above-entitled action jointly submit this JOINT CASE  
10 MANAGEMENT STATEMENT pursuant to this Court's Text Order dated February 13, 2018  
11 (ECF No. 49) and Civil Local Rule 16-10(d).

12 **1. FACTS**

13 Plaintiff-Intervenor, Adrian Scott Duane, began working as a Product Analyst for  
14 Defendant, IXL Learning, Inc. on July 10, 2013. Mr. Duane returned to work on December 30,  
15 2014 after a two-month medical leave of absence for gender confirmation surgery. That evening  
16 Mr. Duane posted a negative review about the company on Glassdoor.com. On January 6, 2015  
17 Mr. Duane met with his immediate supervisor, David Keyes, and informed Mr. Keyes that he felt  
18 that IXL discriminated against him. Mr. Keyes discussed Mr. Duane's concerns with IXL's  
19 CEO, Paul Mishkin on January 6, 2015. Mr. Mishkin scheduled a meeting with Mr. Duane for  
20 January 8, 2015. On January 7, 2015, IXL HR Coordinator, Maricela Prado, found and  
21 forwarded Mr. Duane's negative post on Glassdoor.com to Mr. Mishkin. That same day, on  
22 January 7, 2015, after reviewing the post and determining that Mr. Duane was the author, IXL  
23 decided to fire Mr. Duane at the previously scheduled January 8, 2015 meeting. On January 8,  
24 2015, IXL terminated Mr. Duane because of his Glassdoor.com post.

25  
26 Mr. Duane dually filed a charge of discrimination with the EEOC and the California  
27 Department of Fair Employment and Housing in March 2015 alleging Title VII and ADA

1 violations. On April 22, 2016, the EEOC issued a Letter of Determination finding reasonable  
2 cause to believe that IXL retaliated against Mr. Duane in violation of Title VII and the ADA.  
3 The EEOC issued a letter dated July 28, 2016 indicating that the parties' conciliation efforts had  
4 failed.

## 5 **2. PROCEDURAL STATUS**

6 The EEOC filed the instant action in this Court on May 24, 2017. (ECF No. 1)  
7 Defendant filed an Answer on August 1, 2017. (ECF No. 12) At the Case Management  
8 Conference on September 19, 2017, the Court scheduled fact and expert discovery, dispositive  
9 motions, a pre-trial conference, and trial. (*See* ECF No. 27) On December 4, 2017, this Court  
10 granted Mr. Duane's motion to intervene. (ECF No. 40) Mr. Duane filed a Complaint in  
11 Intervention alleging federal and state law claims on December 21, 2017. (ECF No. 41)  
12 Defendant filed an Answer on January 11, 2018. (ECF No. 42)

## 13 **3. DISCOVERY UPDATES**

14 On December 15, 2018, the EEOC served a first set of Interrogatories and Requests for  
15 Production on Defendant. On December 18, 2017, Defendant served a first set of  
16 Interrogatories, Requests for Production, and Requests for Admission on the EEOC and Plaintiff-  
17 Intervenor. The EEOC served Defendant with a Notice of Deposition pursuant to Fed. R. Civ. P.  
18 30(b)(6) on February 23, 2018 identifying fifteen (15) subject matter categories. The EEOC also  
19 served on Defendant a second and third set of written discovery requests on March 9, 2018 and  
20 March 12, 2018 respectively. The parties have exchanged written discovery and the EEOC and  
21 Plaintiff-Intervenor have conducted eight (8) depositions to date. The parties are in the process  
22 of determining availability in order to schedule the remaining depositions.  
23

## 24 **4. MOTIONS**

25 The parties do not currently anticipate any discovery motions but may file such motions  
26 after complying with the local rules and the standing order of this Court.

27 All parties currently contemplate filing summary judgment or partial summary judgment

1 motions.

2 **5. SETTLEMENT AND ADR**

3 The parties engaged in a one day mediation with court appointed mediator, Patricia  
4 Prince on October 27, 2017. Those mediation efforts were unsuccessful. The parties agree that  
5 settlement discussions at this point in the case, with discovery still pending, will not be fruitful.  
6 Both parties remain open to discussion settlement options once the discovery period ends.  
7

8 **6. SCHEDULING**

9 Fact discovery will close on April 13, 2018. The parties do not anticipate seeking an  
10 extension of time for fact discovery. Opening expert reports are due on May 1, 2018 with the  
11 expert discovery period ending on June 1, 2018. The parties cannot currently confirm whether  
12 expert discovery will be necessary in this case.

13 The Court set July 26, 2018 as the last date to hear dispositive motions. Lead counsel  
14 for the EEOC has a scheduling conflict on July 26, 2018. Defendant agrees to a briefing  
15 schedule so that dispositive motions can be heard by July 19, 2018. However, to accommodate  
16 that briefing schedule, the EEOC would need to file its opening brief one day prior to the close  
17 of expert discovery, as noted below.

18	EEOC opening brief	May 31, 2018
19	Defendant opening brief/Opposition:	June 14, 2018
20	EEOC Opposition/Reply:	June 28, 2018
21	Defendant Reply:	July 5, 2018
22	Disposition motion hearing:	July 19, 2018

23  
24 Alternatively, if the Court is amenable to changing the last day to hear dispositive  
25 motions to August 9, 2018, the parties agree to the following schedule:

26	EEOC opening brief:	June 21, 2018
27	Defendant opening brief/Opposition:	July 5, 2018

1 EEOC Opposition/reply: July 19, 2018  
2 Defendant Reply: July 26, 2018  
3 Disposition motion hearing: August 9, 2018  
4

5 DATED: March 13, 2018

US EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

7  
8 By: /s/ Ami Sanghvi  
AMI SANGHVI

9  
10 DATED: March 13, 2018

THE MAREK LAW FIRM, INC.

11 By: /s/ David Marek  
DAVID MAREK

12  
13 DATED: March 13, 2018

YOUNG BASILE HANLON & MACFARLANE

14 By: /s/ Natasha R. Menezes  
NATASHA R. MENEZES  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27