

April 4, 2018

The Honorable Robert M. Illman
United States District Court
Northern District of California
Eureka-McKinleyville Courthouse
3140 Boeing Avenue
McKinleyville, CA 95519

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

Your Honor,

The parties seek this Court's assistance in resolving a discovery dispute over third party subpoenas. Lead counsel for Plaintiff, Plaintiff-Intervenor, and Defendant met in person to discuss the issues raised herein and have also conferred via phone and email. The parties have been unable to reach a resolution despite and submit this joint letter to outline their positions.

Plaintiffs' position:

Discovery in this retaliation case ends on April 13, 2018. In an inexplicable fishing expedition Defendant IXL Learning, Inc. seeks to compel three non-party fact witnesses ("witnesses") to produce documents pursuant to a Fed. R. Civ. P. 45 subpoena. (*See* Subpoenas for Nina Wu, Jessica Morse, and Nemo Curiel attached as Exh. A)¹ The subpoenas do not provide a relevant time period and seek text, email, and social media communications between the witnesses and Adrian Scott Duane relating to (a) IXL, (b) Mr. Duane's employment at IXL, and (c) employment opportunities after IXL terminated his employment. These subpoenas seek information that is cumulative and duplicative, overly broad, unduly burdensome, and may invade the privacy rights of Mr. Duane. The EEOC requests that this Court prohibit Defendant from using the subpoena power against non-parties in this manner. *See* Fed. R. Civ. P. 45(d)(3)(A)(iii), (iv); Fed. R. Civ. P. 26. The EEOC has standing to quash these subpoenas or seek a protective order. *See EEOC v. Lexus Serramonte*, 237 F.R.D. 220 (N.D. Cal. 2006).

Mr. Duane worked for Defendant IXL Learning, Inc. as a Product Analyst from July 2013 until his termination on January 8, 2015. Plaintiff U.S. Equal Employment Opportunity Commission and Plaintiff-Intervenor Mr. Duane allege that IXL retaliated against Mr. Duane by terminating his employment one day after discovering his negative Glassdoor.com post in which Mr. Duane raised discrimination complaints against IXL. IXL admits to terminating Mr. Duane because of his Glassdoor.com post but contends that the post does not constitute protected opposition activity. All three witnesses are former IXL employees who were friendly with Mr. Duane and have been listed on EEOC and IXL's Initial Disclosures as individuals likely to have discoverable information.

¹ As of the date of this filing, Defendant has only provided proof of service for one of the three individuals – Nemo Curiel that is dated March 24, 2018 and requires compliance by April 4, 2018.

Defendant is responsible for taking reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. Fed. R. Civ. P. 45(d)(1). Here, Defendant has not taken any reasonable steps to avoid the burden on the non-parties and cannot justify why, at this stage in the case, it now seeks to subpoena these witnesses. During the meet and confer discussions, the EEOC asked whether Defendant had a good faith belief that the EEOC's discovery responses are deficient, and offered Defendant the opportunity to test the completeness of the EEOC's production by discussing the process the EEOC used to cull the electronic data, including search terms. Opposing counsel explained that it did not have concerns about the completeness of the EEOC's discovery production, nor did counsel raise any concerns about the EEOC and Mr. Duane's preservation efforts.² Rather, counsel claimed to believe the witnesses might possess information that Duane doesn't have because the EEOC produced *more* information than what Mr. Duane produced in the NLRB proceeding.³ Given the entirely different legal claim at issue in this case, the difference in production is unsurprising. However, it does not support Defendant's conclusion that this difference suggests there is discovery that Mr. Duane no longer possesses.

The scope of the discovery that can be requested through a subpoena under Fed. R. Civ. P. 45 is the same as the scope under Fed. R. Civ. P. 26(b). See *Drummond Co. v. Collingsworth*, 13-mc-80169-JST(JCS), 13-mc-80171-JST (JCS), 2013 U.S. Dist. LEXIS 163971 *28 - 29 (N.D. Cal. Nov. 18, 2013) (*citing* Fed. R. Civ. P. 45 Advisory Comm.'s Note (1970)). While the EEOC bears the burden of persuasion as to why the subpoenas are inappropriate vehicles for discovery, Defendant nonetheless must demonstrate that the discovery sought is relevant, not unreasonably duplicative, and the benefit outweighs the burden of producing it. *Id.* at *30 (collecting cases). Defendant cannot do so here.

The subpoenas request cumulative and duplicative information. Defendant already requested communications between Mr. Duane and each of the three witnesses at issue here. (*See* Defendant's Request for Production of Documents dated December 18, 2017 attached as Exh. B) Defendant's first set of document requests sought production of all communications (including text and Facebook messages, instant messages, and social media posts) between: (a) "Duane and any third party which discuss, relate to, reflect upon, or contain information about any of the allegations in the Complaint" (Exh. B at Request No. 12) and (b) "Duane and IXL or any of IXL's current or former employees related to the allegations in your Complaint" (Exh. B at Request No. 13) (emphasis added). Defendant also sought documents relating to Mr. Duane's efforts to obtain employment following his employment with IXL, including documents Mr. Duane submitted to persons whose assistance he sought in obtaining employment. (Exh. B at Request No. 23). The relevant communications between Mr. Duane and each witness is in the control and the possession of the parties. See *Hiramanek v. Clark*, 2015 U.S. Dist. LEXIS 111207 *3-4, 13-cv-00228-RMW (Aug. 20, 2015). To the extent that the communications occurred during IXL employment and on IXL devices, such discovery is in IXL's possession and control. To the extent that the communications occurred on personal devices, the EEOC already

² Defendant had the opportunity to question Mr. Duane about his preservation efforts during his deposition. Mr. Duane was aware of his obligation to preserve and testified that it was not his practice to delete ESI.

³ Mr. Duane produced documents pursuant to an order partially granting Mr. Duane's petition to revoke IXL's subpoena for documents. The ALJ limited the requests to documents Mr. Duane contends support the NLRB complaint allegations. (In accordance with this Court's Standing Order, the EEOC has not attached this decision.)

produced text messages, emails, and Facebook posts and messages between Mr. Duane and all three witnesses. Similarly, the EEOC also produced documents relating to Mr. Duane's efforts to obtain employment after IXL fired him in January 2015 to January 2016, at which point Mr. Duane secured comparable employment and his backpay claim ends. Defendant offers no evidence that suggests that the witnesses have any information above and beyond that which is in either party's possession.

Defendant cannot demonstrate how the benefits of any requested information outweighs the burdens on the non-parties. Under Fed. R. Civ. P. 45(c)(3)(A), "[a]n evaluation of undue burden requires the court to weigh the burden to the subpoenaed party against the value of the information to the serving party." *Moon v. SCP Pool Corp.*, 235 F.R.D. 633, 637 (2005) (citation omitted) (considering factors such as relevance, the need of the party for the documents, the breadth of the document request, the time period covered by it, the particularity with which the documents are described and the burden imposed.) *Id.* Here, an evaluation of the undue burden to the witnesses outweighs the remote possibility that Defendant may unearth a relevant communication. The subpoenas are overly broad and vague because they are not limited in time. Mr. Duane's claim for back pay ends as of January 2016 so any subsequent communications about employment opportunities or job search efforts is completely irrelevant. Similarly, the documents are not requested with specificity and broadly request information that may even be reasonably accessible. For example, seeking "electronic copies of communications or postings to or from Mr. Duane on [the witness's] account on any social media site" could require a lay witness, with presumably no access to sophisticated electronic search software or tools, to review all instances where they commented or reacted to a post by Mr. Duane in order to determine what is responsive to the subpoena. (*See* Exh. A at request no. 4) Depending on user activity, this could be a daunting task. It is particularly troubling that this burden is unnecessary since the EEOC already produced to Defendant Mr. Duane's Facebook posts, including those where the subpoenaed witnesses comment or react. Finally, Defendant previously argued that the subpoena for documents was less burdensome than requiring attendance at a deposition, and yet now Defendant seeks to serve Mr. Curiel – the only witness successfully served with the subpoena *duces tecum* – with a subpoena for deposition as well.⁴

Lastly, lay witnesses may produce information that infringes on Mr. Duane's privacy rights. For example, the subpoena requires that a witness produce an entire email chain with Mr. Duane, even if only part of that communication is responsive to the request. (*See* Exh. A at Instruction No. 4) The possibility that the witnesses may disclose information subject to Mr. Duane's privacy rights or even that which just embarrasses Mr. Duane is too great. Indeed, this is precisely why discovery of non-parties is limited. Fed. R. Civ. P. 45(c)(3)(A)(iii); *see also e.g., High Tech Med. Instr., Inc. v. New Image Ind., Inc.*, 161 F.R.D. 86, 88 (N.D. Cal. 1995) (recognizing the Ninth Circuit's protection for non-parties subject to discovery requests and who are unable to control the scope of litigation).

The EEOC asks that this Court reject Defendant's misuse of the subpoena power and order that Defendant may not enforce the subpoena for documents served on Mr. Curiel and may not attempt to serve Ms. Wu or Ms. Morse with these subpoenas for documents again.

⁴ On March 30, 2018, Defendant notified Plaintiffs that it would also serve Mr. Curiel with a subpoena to appear for a deposition on April 9, 2018. The EEOC has yet to receive proof that service was completed.

Defendant's Position

IXL has served a subpoena for documents on Nemo Curiel⁵ and will serve a subpoena for documents on Jessica Morse and Nina Wu pending the outcome of this dispute. These witnesses are former IXL employees, and the subpoenas seek communications about IXL, Duane's employment at IXL, and Duane's job search following his employment at IXL.

IXL terminated Duane on January 8, 2015 due to reckless comments posted on Glassdoor, a recruiting site IXL uses. The Glassdoor post, in part, complained that treatment at IXL is based on certain characteristics ("family-oriented white or Asian straight or mainstream gay person with 1.7 kids"), that "there are no politics if you fit in," and that IXL's CEO was overly involved. IXL's CEO believed the post amounted to defamation and concluded that Duane's blatantly untrue statements were deliberately intended to harm IXL's recruitment efforts. Following his termination, Duane told IXL's CEO that he would be hearing from Duane's lawyer.

IXL is entitled to information sought by means of a subpoena if the information is relevant to the claims and defenses in the case, which is liberally construed given the broad definition of relevance in FRCP 26. *Gonzales v. Google, Inc.*, 234 F.R.D. 674, 680 (N.D. Cal. 2006). The EEOC, as the party moving to quash a subpoena, bears the burden of persuasion, and this burden is a heavy one. *ATS Prod., Inc v. Champion Fiberglass, Inc.*, 309 F.R.D. 527, 531 (N.D. Cal. 2015) (citation omitted); *In re Yassai*, 225 B.R. 478, 484 (Bankr. C.D. Cal. 1998). These subpoenas seek relevant information, and both the EEOC and IXL have, by listing these witness on the party's Initial Disclosures, admitted that these individuals are likely to have discoverable information.

First, the documents sought in the subpoenas are not cumulative or duplicative, and IXL disagrees that all relevant communications between Duane and each witness is in the control and possession of the parties. Importantly, most of Duane's false accusations about IXL in his Glassdoor post are not based on any actual incident Duane was involved in or witnessed, but supposedly something he was told by coworkers like Curiel, Wu, and Morse. Duane testified he based his accusation that IXL's CEO was overly involved on something Morse allegedly told him about a video-based tool she worked on while an employee at IXL.⁶ Duane has also testified that his accusations about differing treatment and "fitting in" are based on communications with Curiel, which occurred months before Duane posted on Glassdoor. Thus, his communications with these witnesses about their employment at IXL are plainly relevant and allow IXL to defend itself in arguing that Duane did not have a reasonable good faith belief in making such statements.

⁵ Curiel has not raised any objections to this subpoena. Also, IXL has been attempting to serve Curiel with a subpoena to appear for a deposition. IXL will provide the EEOC with proof of service once this has been completed. Seeking to depose Curiel, however, does not diminish IXL's need for the documents sought in its subpoenas as explained herein.

⁶ Only a rough draft of Duane's deposition testimony is available at this time given that Duane's deposition was recently taken. Thus, IXL has not attached the applicable deposition transcript of Duane because it has not been finalized and certified.

The EEOC erroneously states that IXL does not question Duane's preservation efforts. To the contrary, IXL explained it does in fact question whether Duane preserved all communications. The EEOC's document production is based on its search of Duane's computer and devices, and IXL explained that it does not know of any improper search conducted of those devices by the EEOC. But, the EEOC cannot produce what Duane may have deleted or simply failed to preserve in the two years prior to the EEOC's search. In this regard, Duane had a duty to preserve evidence which he knew or reasonably should know is relevant as of January 2015, when he told IXL that IXL would be hearing from his lawyer. *Waters v. Kohl's Dep't Stores, Inc.*, No. 14-CV-00043-KAW, 2015 WL 1519657, at *3 (N.D. Cal. Apr. 2, 2015). This is especially true in light of Duane filing a charge of discrimination with both the EEOC and California's DFEH on March 10, 2015 and filing a complaint against IXL with the National Labor Relations Board on June 3, 2015 (the "NLRB Case"). All charges in all administrative proceedings related to Duane's Glassdoor post.

The EEOC mischaracterizes Duane's production in 2015 in response to IXL's subpoena to him directly in the NLRB Case. In the NLRB Case, IXL sent Duane a subpoena which sought, in part, documents (including texts and chat messages) concerning: Duane's employment at IXL, Duane's communications with employees regarding employment at IXL, any alleged discriminatory or retaliatory conduct by IXL, and documents substantiating or refuting any statements made by Duane in his Glassdoor post. (Exh. C.) In response, the only text messages produced by Duane were screenshots of conversations with Morse in exchanges held on December 23, 2014 and January 6, 2015 that he then emailed to his attorney. In this case, IXL requested communications and other documents from Duane that relate to the allegations in the Complaint (which include his accusations in his Glassdoor post), including communications with current and former IXL employees. (Exh. B at Request No. 11-13) In response, the EEOC produced additional texts, with the large majority of texts occurring on or after December 2014. Only 7 texts messages were produced that occurred before December 2014. This is concerning because Duane testified that, during his employment with IXL, he corresponded with Wu, Curiel, and Morse in part through text messages, but that he did nothing before, during, or after he filed charges with the EEOC or NLRB to prevent any such communications from being automatically deleted. Duane admitted in his deposition that there were communications that he produced in this case that he did not produce in the NLRB Case, despite IXL's subpoena in the NLRB Case seeking such communications. Thus, the information IXL seeks is not duplicative or cumulative because Duane did not produce, under the presumption that he does not have, these relevant communications. *Sprint Sols., Inc. v. Pac. Cellulpage Inc.*, No. CV137862CASJCGX, 2015 WL 12656909, at *1 (C.D. Cal. Apr. 3, 2015) (noting that a party is entitled to legitimate third-party discovery and "such discovery serves the integrity and fairness of the judicial process by promoting the search for the truth"); *Hamilton Partners, L.P. v. Highland Capital Mgmt., L.P.*, No. CV 6547-VCN, 2016 WL 612233, at *6 (Del. Ch. Feb. 2, 2016) (allowing third party subpoenas because the risk that documents would be duplicative or oppressive was low given that the different individuals would likely produce different documents and would allow plaintiff to test the truth, accuracy, and completeness of extant and forthcoming productions).

Second, the EEOC argues that these subpoenas are unduly burdensome. "A subpoena is unduly burdensome where it seeks to compel production of documents regarding topics unrelated to or beyond the scope of litigation." *AngioScore, Inc. v. TriReme Med., Inc.*, No. 12-CV-03393-

YGR JSC, 2014 WL 6706873, at *2–3 (N.D. Cal. Nov. 25, 2014); *See Mattel, Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 813–14 (9th Cir. 2003). As previously discussed, the subpoenas seek relevant information that directly bear on IXL’s ability to defend itself against these claims. Because Duane no longer has these communications when he failed to preserve them, IXL is entitled to seek these material documents from third parties to determine whether Duane had any objectively reasonable, good faith basis for making what IXL claims to be maliciously false accusations intended to harm the company. *See Wahoo Int’l, Inc. v. Phix Doctor, Inc.*, No. 13CV1395-GPC BLM, 2014 WL 3573400, at *2 (S.D. Cal. July 18, 2014). To the extent the EEOC claims the documents are not reasonably accessible, FRCP 45(e)(1)(D) already addresses this issue. These individuals “need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost,” and IXL is not expecting that the individuals provide discovery from inaccessible sources. The EEOC’s concerns regarding documents infringing on Duane’s privacy rights can be addressed through the Stipulated Protected Order (DE 45) by marking all documents as “Confidential.”

Finally, the EEOC’s arguments are undermined by the fact that it has subpoenaed Glassdoor for documents IXL already produced or for information readily available on Glassdoor’s website. Despite the EEOC’s characterization of IXL’s subpoenas as an “inexplicable fishing expedition” by seeking documents from third parties that were also sought from a party, the EEOC is pursuing the same contracts from Glassdoor that were already sought from IXL in discovery. The EEOC should not be permitted to obstruct IXL’s non-party discovery by claiming it is a “cumulative and duplicative, overly broad, unduly burdensome” fishing expedition when the EEOC seeks information spanning more than five years despite Duane working only a year and a half with IXL. IXL will be meeting and conferring with the EEOC in accordance with the Court’s Discovery Dispute process as stated in its Standing Order regarding this.

The EEOC has now taken ten depositions that included a wide-ranging and invasive examination of IXL’s business and the personal lives of its employees, including IXL’s personnel decisions and practices in 2018 (three full years after Duane’s employment was terminated). IXL has also produced over 3,500 documents from over ten custodians. IXL has taken one deposition – Duane – and now seeks documents that Duane should have preserved starting in early 2015. Thus, IXL requests that the Court allow IXL to enforce the subpoena served on Nemo Curiel and allow IXL to serve Jessica Morse and Nina Wu with the subpoenas.

Respectfully submitted,

/s/ Ami Sanghvi

Ami Sanghvi for Plaintiff EEOC

/s/ David Marek

David Marek for Plaintiff-Intervenor Adrian Scott Duane

/s/ Natasha R. Menezes

Natasha R. Menezes for Defendant IXL Learning, Inc.

EXHIBIT A

UNITED STATES DISTRICT COURT

for the

Northern District of California

U.S. EEOC and ADRIAN SCOTT DUANE

Plaintiff

v.
IXL LEARNING, INC.

Defendant

Civil Action No. 3:17-cv-02979-VC

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Nina Wu
110 Everson Street, San Francisco, CA 94131

(Name of person to whom this subpoena is directed)

Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See attached Schedule A.

Place: Imai, Tadlock, Keeney & Cordery, LLP 220 Montgomery St, Ste 301, San Francisco, CA 94104 and/or email to: menezes@youngbasile.com	Date and Time: 04/04/2018 5:00 pm
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Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 03/21/2018

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Natasha R. Menezes

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Defendant
IXL Learning, Inc., who issues or requests this subpoena, are:

Natasha R. Menezes, 3001 W. Big Beaver Rd., Ste. 624, Troy, MI 48084, 248-649-3333, menezes@youngbasile.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:17-cv-02979-VC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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Attorneys for Defendants

IXL Learning, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT OPPORTUNITY : Case No.: 3:17-cv-02979-VC

COMMISSION, :

Plaintiff, :

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS

and :

SCHEDULE A

ADRIAN SCOTT DUANE, :

Plaintiff-Intervenor, :

v. :

IXL LEARNING, INC., :

Defendant. :

1 Defendant IXL Learning, Inc. (“IXL”), by and through its undersigned counsel, and pursuant to
2 Federal Rule of Civil Procedure Rule 45, requests that non-party Nina Wu produce documents responsive
3 to the foregoing subpoena 14 days from the date of service at the law offices of Imai, Tadlock, Keeney &
4 Cordery, LLP, 220 Montgomery Street, Suite 301, San Francisco, CA 94104, and/or via electronic mail
5 to menezes@youngbasile.com, litadmin@youngbasile.com, and rrwertz@itkc.com.

6 The subpoena requests are subject to the following definitions and instructions:

7 1. “Document” or “documents” means and shall include any designated documents,
8 correspondence, or electronically stored information—including writings, drawings, graphs, charts,
9 photographs, sound recordings, images, and other data or data compilations—stored in any medium from
10 which information can be obtained either directly or, if necessary, after translation by the responding party
11 into a reasonably usable form. “Documents” includes, but is not limited to, instruments, agreements,
12 books, correspondence (including, but not limited to, any type of messaging via an app or social media
13 site, such as Facebook), emails, records, schedules, tables, reports, memoranda, notes, letters, telegrams,
14 invoices, orders, order forms, messages (including reports and summaries of telephone conversations
15 and/or conferences, text messages, Facebook postings, tweets, blog posts, and any other social media
16 messages), minutes, inter- and intra-office communications (including, but not limited to, “GChat”) and
17 all other written or printed or electronic matter of any kind. The term “document” refers to any document
18 now or at any time in Nina Wu’s possession, custody, or control. A person is deemed in control of a
19 document if the person has any ownership, possession, or custody of the document, or the right to secure
20 the document or a copy thereof from any person or public or private entity having physical possession
21 thereof.

22 2. “Nina Wu,” “you,” “your,” “she,” “her,” “hers,” or “Ms. Wu” means non-party Nina Wu
23 and her representative agents, employees, insurers, and attorneys.

24 3. “Plaintiff,” “he,” “him,” “his,” and “Mr. Duane” means Adrian Scott Duane and his
25 representative agents, employees, insurers, investigators, expert witnesses, and attorneys.

26 4. “IXL Learning, Inc.” and “IXL” means Defendant IXL Learning, Inc. and its representative
27 agents, employees, insurers, investigators, expert witnesses, and attorneys.
28

DOCUMENT REQUESTS

1
2 1. Any and all text message communications between you and Mr. Duane concerning,
3 relating to, describing, or discussing:

- 4 a. IXL;
5 b. Duane’s employment at IXL; and
6 c. Duane’s employment opportunities following his employment at IXL, including
7 communications related to his job search and any applications and/or offers for
8 employment.

9 2. Any and all emails between you and Mr. Duane concerning, relating to, describing, or
10 discussing:

- 11 a. IXL;
12 b. Duane’s employment at IXL; and
13 c. Duane’s employment opportunities following his employment at IXL, including
14 emails related to his job search and any applications and/or offers for employment.

15 3. Any and all correspondence and documents between you and Mr. Duane concerning,
16 relating to, describing, or discussing:

- 17 a. IXL;
18 b. Duane’s employment at IXL; and
19 c. Duane’s employment opportunities following his employment at IXL, including
20 communications and documents related to his job search and any applications
21 and/or offers for employment.

22 4. Electronic copies of communications or postings to or from Mr. Duane on your account on
23 any social media site, including, but not limited to, Facebook, WhatsApp, MySpace, Twitter, LinkedIn,
24 Four Square, Instagram, Pinterest, Flickr, Google+, Google Picasa, LiveJournal, and/or Tumbler,
25 concerning, relating to, describing, or discussing:

- 26 a. IXL;
27 b. Duane’s employment at IXL; and
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1 c. Duane’s employment opportunities following his employment at IXL, including
2 communications related to his job search and any applications and/or offers for
3 employment.

4
5 Dated: March 21, 2018

Respectfully submitted,
Young Basile Hanlon & MacFarlane, P.C.

6 By: /s/ Natasha R. Menezes
7 **Jeffrey D. Wilson (Pro Hac Vice)**
8 wilson@youngbasile.com
9 **Natasha R. Menezes (Pro Hac Vice)**
10 menezes@youngbasile.com
11 *Attorneys for Defendant IXL Learning, Inc.*

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UNITED STATES DISTRICT COURT

for the

Northern District of California

U.S. EEOC and ADRIAN SCOTT DUANE

Plaintiff

v.
IXL LEARNING, INC.

Defendant

Civil Action No. 3:17-cv-02979-VC

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Jessica Morse
1440 Mason St., San Francisco, CA 94133

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See attached Schedule A.

Place: Imai, Tadlock, Keeney & Cordery, LLP 220 Montgomery St, Ste 301, San Francisco, CA 94104 and/or email to: menezes@youngbasile.com	Date and Time: 04/04/2018 5:00 pm
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Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 03/21/2018

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Natasha R. Menezes
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Defendant IXL Learning, Inc. _____, who issues or requests this subpoena, are:

Natasha R. Menezes, 3001 W. Big Beaver Rd., Ste. 624, Troy, MI 48084, 248-649-3333, menezes@youngbasile.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:17-cv-02979-VC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____
_____ *Server's signature*

_____ *Printed name and title*

_____ *Server's address*

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

IMAI, TADLOCK, KEENEY & CORDERY, LLP

R. RANDY WERTZ

rrwertz@itkc.com
220 Montgomery Street, Suite 301
San Francisco, California 94104
Telephone: (415) 675-7000
Facsimile: (415) 675-7008

YOUNG BASILE HANLON & MACFARLANE, P.C.

JEFFREY D. WILSON (PRO HAC VICE)

wilson@youngbasile.com

NATASHA R. MENEZES (PRO HAC VICE)

menezes@youngbasile.com
3001 W. Big Beaver Road, Suite 624
Troy, Michigan 48084
Telephone: (248) 649-3333
Facsimile: (248) 649-3338

Attorneys for Defendants
IXL Learning, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT OPPORTUNITY : Case No.: 3:17-cv-02979-VC

COMMISSION, :

Plaintiff, :

**SUBPOENA TO PRODUCE DOCUMENTS,
INFORMATION, OR OBJECTS**

and :

SCHEDULE A

ADRIAN SCOTT DUANE, :

Plaintiff-Intervenor, :

v. :

IXL LEARNING, INC., :

Defendant. :

1 Defendant IXL Learning, Inc. (“IXL”), by and through its undersigned counsel, and pursuant to
2 Federal Rule of Civil Procedure Rule 45, requests that non-party Jessica Morse produce documents
3 responsive to the foregoing subpoena 14 days from the date of service at the law offices of Imai, Tadlock,
4 Keeney & Cordery, LLP, 220 Montgomery Street, Suite 301, San Francisco, CA 94104, and/or via
5 electronic mail to menezes@youngbasile.com, litadmin@youngbasile.com, and rrwertz@itkc.com.

6 The subpoena requests are subject to the following definitions and instructions:

7 1. “Document” or “documents” means and shall include any designated documents,
8 correspondence, or electronically stored information—including writings, drawings, graphs, charts,
9 photographs, sound recordings, images, and other data or data compilations—stored in any medium from
10 which information can be obtained either directly or, if necessary, after translation by the responding party
11 into a reasonably usable form. “Documents” includes, but is not limited to, instruments, agreements,
12 books, correspondence (including, but not limited to, any type of messaging via an app or social media
13 site, such as Facebook), emails, records, schedules, tables, reports, memoranda, notes, letters, telegrams,
14 invoices, orders, order forms, messages (including reports and summaries of telephone conversations
15 and/or conferences, text messages, Facebook postings, tweets, blog posts, and any other social media
16 messages), minutes, inter- and intra-office communications (including, but not limited to, “GChat”) and
17 all other written or printed or electronic matter of any kind. The term “document” refers to any document
18 now or at any time in Jessica Morse’s possession, custody, or control. A person is deemed in control of a
19 document if the person has any ownership, possession, or custody of the document, or the right to secure
20 the document or a copy thereof from any person or public or private entity having physical possession
21 thereof.

22 2. “Jessica Morse,” “you,” “your,” “she,” “her,” “hers,” or “Ms. Morse” means non-party
23 Jessica Morse and her representative agents, employees, insurers, and attorneys.

24 3. “Plaintiff,” “he,” “him,” “his,” and “Mr. Duane” means Adrian Scott Duane and his
25 representative agents, employees, insurers, investigators, expert witnesses, and attorneys.

26 4. “IXL Learning, Inc.” and “IXL” means IXL Learning, Inc. and its representative agents,
27 employees, insurers, investigators, expert witnesses, and attorneys.
28

DOCUMENT REQUESTS

1
2 1. Any and all text message communications between you and Mr. Duane concerning,
3 relating to, describing, or discussing:

- 4 a. IXL;
5 b. Duane’s employment at IXL; and
6 c. Duane’s employment opportunities following his employment at IXL, including
7 communications related to his job search and any applications and/or offers for
8 employment.

9 2. Any and all emails between you and Mr. Duane concerning, relating to, describing, or
10 discussing:

- 11 a. IXL;
12 b. Duane’s employment at IXL; and
13 c. Duane’s employment opportunities following his employment at IXL, including
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- 17 a. IXL;
18 b. Duane’s employment at IXL; and
19 c. Duane’s employment opportunities following his employment at IXL, including
20 communications and documents related to his job search and any applications
21 and/or offers for employment.

22 4. Electronic copies of communications or postings to or from Mr. Duane on your account on
23 any social media site, including, but not limited to, Facebook, WhatsApp, MySpace, Twitter, LinkedIn,
24 Four Square, Instagram, Pinterest, Flickr, Google+, Google Picasa, LiveJournal, and/or Tumbler,
25 concerning, relating to, describing, or discussing:

- 26 a. IXL;
27 b. Duane’s employment at IXL; and
28

1 c. Duane's employment opportunities following his employment at IXL, including
2 communications related to his job search and any applications and/or offers for
3 employment.

4 Respectfully submitted,

5 Dated: March 21, 2018

Young Basile Hanlon & MacFarlane, P.C.

6 By: /s/ Natasha R. Menezes

7 **Jeffrey D. Wilson (Pro Hac Vice)**

wilson@youngbasile.com

8 **Natasha R. Menezes (Pro Hac Vice)**

menezes@youngbasile.com

9 *Attorneys for Defendant IXL Learning, Inc.*

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UNITED STATES DISTRICT COURT

for the

Northern District of California

U.S. EEOC and ADRIAN SCOTT DUANE

Plaintiff

v.
IXL LEARNING, INC.

Defendant

Civil Action No. 3:17-cv-02979-VC

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Nemo Curiel
298 Fairmount Avenue, #3, Oakland, CA 94611

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See attached Schedule A.

Place: Imai, Tadlock, Keeney & Cordery, LLP 220 Montgomery St, Ste 301, San Francisco, CA 94104 and/or email to: menezes@youngbasile.com	Date and Time: 04/04/2018 5:00 pm
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Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 03/21/2018

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Natasha R. Menezes

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Defendant IXL Learning, Inc., who issues or requests this subpoena, are:

Natasha R. Menezes, 3001 W. Big Beaver Rd., Ste. 624, Troy, MI 48084, 248-649-3333, menezes@youngbasile.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:17-cv-02979-VC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

IMAI, TADLOCK, KEENEY & CORDERY, LLP

R. RANDY WERTZ

rrwertz@itkc.com

220 Montgomery Street, Suite 301

San Francisco, California 94104

Telephone: (415) 675-7000

Facsimile: (415) 675-7008

YOUNG BASILE HANLON & MACFARLANE, P.C.

JEFFREY D. WILSON (PRO HAC VICE)

wilson@youngbasile.com

NATASHA R. MENEZES (PRO HAC VICE)

menezes@youngbasile.com

3001 W. Big Beaver Road, Suite 624

Troy, Michigan 48084

Telephone: (248) 649-3333

Facsimile: (248) 649-3338

Attorneys for Defendants

IXL Learning, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT OPPORTUNITY : Case No.: 3:17-cv-02979-VC

COMMISSION, :

Plaintiff, :

**SUBPOENA TO PRODUCE DOCUMENTS,
INFORMATION, OR OBJECTS**

and :

SCHEDULE A

ADRIAN SCOTT DUANE, :

Plaintiff-Intervenor, :

v. :

IXL LEARNING, INC., :

Defendant. :

1 Defendant IXL Learning, Inc. (“IXL”), by and through its undersigned counsel, and pursuant to
2 Federal Rule of Civil Procedure Rule 45, requests that non-party Nemo Curiel produce documents
3 responsive to the foregoing subpoena 14 days from the date of service at the law offices of Imai, Tadlock,
4 Keeney & Cordery, LLP, 220 Montgomery Street, Suite 301, San Francisco, CA 94104, and/or via
5 electronic mail to menezes@youngbasile.com, litadmin@youngbasile.com, and rrwertz@itkc.com.

6 The subpoena requests are subject to the following definitions and instructions:

7 1. “Document” or “documents” means and shall include any designated documents,
8 correspondence, or electronically stored information—including writings, drawings, graphs, charts,
9 photographs, sound recordings, images, and other data or data compilations—stored in any medium from
10 which information can be obtained either directly or, if necessary, after translation by the responding party
11 into a reasonably usable form. “Documents” includes, but is not limited to, instruments, agreements,
12 books, correspondence (including, but not limited to, any type of messaging via an app or social media
13 site, such as Facebook), emails, records, schedules, tables, reports, memoranda, notes, letters, telegrams,
14 invoices, orders, order forms, messages (including reports and summaries of telephone conversations
15 and/or conferences, text messages, Facebook postings, tweets, blog posts, and any other social media
16 messages), minutes, inter- and intra-office communications (including, but not limited to, “GChat”) and
17 all other written or printed or electronic matter of any kind. The term “document” refers to any document
18 now or at any time in Nemo Curiel’s possession, custody, or control. A person is deemed in control of a
19 document if the person has any ownership, possession, or custody of the document, or the right to secure
20 the document or a copy thereof from any person or public or private entity having physical possession
21 thereof.

22 2. “Nemo Curiel,” “you,” “your,” “he,” “him,” “his,” or “Mr. Curiel” means non-party Nemo
23 Curiel and his representative agents, employees, insurers, and attorneys.

24 3. “Plaintiff,” “he,” “him,” “his,” and “Mr. Duane” means Adrian Scott Duane and his
25 representative agents, employees, insurers, investigators, expert witnesses, and attorneys.

26 4. “IXL Learning, Inc.” and “IXL” means Defendant IXL Learning, Inc. and its representative
27 agents, employees, insurers, investigators, expert witnesses, and attorneys.
28

DOCUMENT REQUESTS

1
2 1. Any and all text message communications between you and Mr. Duane concerning,
3 relating to, describing, or discussing:

- 4 a. IXL;
5 b. Duane’s employment at IXL; and
6 c. Duane’s employment opportunities following his employment at IXL, including
7 communications related to his job search and any applications and/or offers for
8 employment.

9 2. Any and all emails between you and Mr. Duane concerning, relating to, describing, or
10 discussing:

- 11 a. IXL;
12 b. Duane’s employment at IXL; and
13 c. Duane’s employment opportunities following his employment at IXL, including
14 emails related to his job search and any applications and/or offers for employment.

15 3. Any and all correspondence and documents between you and Mr. Duane concerning,
16 relating to, describing, or discussing:

- 17 a. IXL;
18 b. Duane’s employment at IXL; and
19 c. Duane’s employment opportunities following his employment at IXL, including
20 communications and documents related to his job search and any applications
21 and/or offers for employment.

22 4. Electronic copies of communications or postings to or from Mr. Duane on your account on
23 any social media site, including, but not limited to, Facebook, WhatsApp, MySpace, Twitter, LinkedIn,
24 Four Square, Instagram, Pinterest, Flickr, Google+, Google Picasa, LiveJournal, and/or Tumbler,
25 concerning, relating to, describing, or discussing:

- 26 a. IXL;
27 b. Duane’s employment at IXL; and
28

1 c. Duane's employment opportunities following his employment at IXL, including
2 communications related to his job search and any applications and/or offers for
3 employment.

4 Respectfully submitted,

5 Dated: March 21, 2018

Young Basile Hanlon & MacFarlane, P.C.

6 By: /s/ Natasha R. Menezes

7 **Jeffrey D. Wilson (Pro Hac Vice)**

wilson@youngbasile.com

8 **Natasha R. Menezes (Pro Hac Vice)**

menezes@youngbasile.com

9 *Attorneys for Defendant IXL Learning, Inc.*

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Civil Action No. 3:17-CV02979-VC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* **NEMO CURIEL**
on *(date)* **March 21, 2018**

I served the subpoena by delivering a copy to the named person as follows: **298 FAIRMOUNT AVE., #3 ,
OAKLAND, CA 94611** on *(date)* **3/24/2018 at 3:40 PM**; or

I returned the summons unexecuted because; _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for ones day's attendance, and the mileage allowed by law, in the amount of

\$.00

My fees are \$.00 for travel and \$ 80.00 for services, for a total of \$ 80.00

I declare under penalty of perjury that this information is true.

Date: 3/26/2018

Server's signature

THOMAS MIRANDA
Printed name and title

Contracted by
903 Sneath Lane, Suite 227,
San Bruno, CA 94066
(650) 794-1923

Server's Address

Additional information regarding attempted service, etc.:

EXHIBIT B

1 **IMAI, TADLOCK, KEENEY & CORDERY, LLP**

2 **R. RANDY WERTZ**

3 rrwertz@itkc.com

4 220 Montgomery Street, Suite 301

5 San Francisco, California 94104

6 Telephone: (415) 675-7000

7 Facsimile: (415) 675-7008

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

9 **JEFFREY D. WILSON (PRO HAC VICE)**

10 wilson@youngbasile.com

11 **NATASHA R. MENEZES (PRO HAC VICE)**

12 menezes@youngbasile.com

13 3001 W. Big Beaver Road, Suite 624

14 Troy, Michigan 48084

15 Telephone: (248) 649-3333

16 Facsimile: (248) 649-3338

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. :

**DEFENDANT’S FIRST SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS TO
PLAINTIFF EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Defendant IXL Learning, Inc., by and through its undersigned counsel, requests that Plaintiff U.S. Equal Employment Opportunity Commission (“Plaintiff”) produce documents responsive to the following Requests for Production of

1 Documents within 30 days from the date of service at the law offices of Young Basile Hanlon &
2 MacFarlane, P.C. This Request for Production of Documents shall be deemed continuing pursuant to
3 Fed. R. Civ. P. 26(e), therefore requiring supplementation after the return date and until the time of trial.

4 This Request for Production of Documents is subject to the following definitions and
5 instructions:

6 **DEFINITIONS**

7 1. "Person" includes an individual, firm, corporation, partnership, group, trust, association,
8 or other legal entity.

9 2. "Documents" includes, but is not limited to, instruments, agreements, books, writing,
10 correspondence (including, but not limited to, any type of messaging via an app or social media site,
11 such as Facebook), emails, records, schedules, tables, charts, reports, memoranda, notes, letters,
12 telegrams, invoices, orders, order forms, messages (including reports and summaries of telephone
13 conversations and/or conferences, text messages, Facebook postings, tweets, blog posts, and any other
14 social media messages), minutes, inter- and intra-office communications (including, but not limited to,
15 "GChat") and all other written or printed or electronic matter of any kind.

16 3. "Identify" with respect to individuals means to give the name and last known address and
17 telephone number of such individual and the name, address, and telephone number of the last known
18 place of business where such individual is or was employed.

19 4. The singular tense includes the plural and masculine includes the feminine and neuter
20 gender, as the case may be.

21 5. The word "you" or "your" or "Plaintiff," as used in these requests, refers to the U.S.
22 Equal Employment Opportunity Commission and any person or organization acting on its behalf for the
23 purpose of the matter under inquiry.

24 6. "IXL" when used herein, refers to IXL Learning, Inc. and/or anyone acting on its behalf.

25 7. "Duane," when used herein, refers to Plaintiff-Intervenor Adrian Scott Duane and any
26 person or organization, such as Plaintiff, acting on his behalf for the purpose of the matter under inquiry.

27 8. "Complaint" means the Complaint and any other amended complaints you filed or will
28 file in the above-captioned case.

INSTRUCTIONS

- 1
- 2 A. If you refuse to answer any Request for Production of Documents or part thereof:
- 3 i. state the basis for your claim of privilege, work product, or other ground of non-
- 4 disclosure;
- 5 ii. describe the conversation, information, or document you are withholding,
- 6 including:
- 7 a. its date;
- 8 b. the names of its participants, authors, or preparers and identification, by
- 9 employment and title, of each such person;
- 10 c. the names of each person who was sent, or has had access to or custody of, the
- 11 document or information, together with an identification of each such person;
- 12 and
- 13 d. in the case of any document relating in any way to a meeting or conversation,
- 14 an identification of such meeting or conversation.

15 B. If any information necessary to respond to any Request for Production of Documents

16 was, but is no longer, in existence or in the possession, custody, or control of Plaintiff, state whether the

17 information:

- 18 i. is missing or lost;
- 19 ii. has been destroyed;
- 20 iii. has been transferred, voluntarily or involuntarily, to others; or
- 21 iv. has been otherwise disposed of.

22 For each instance, explain the circumstances surrounding such disposition, give the date or approximate

23 date thereof, and the names and last known home and business addresses and telephone numbers of

24 those persons with knowledge of such circumstances.

25 C. If any of the responses to the Requests for Production of Documents cannot be answered

26 in full, please respond to the extent possible, specifying the reasons for the inability to respond to the

27 remainder, and stating whatever information or knowledge or producing whatever documents are

28 available concerning the unanswered portions.

1 D. Pursuant to Federal Rule of Civil Procedure 34, in responding to these requests, you
2 should affirmatively state the full extent to which you will produce materials and should, promptly after
3 the production, confirm in writing that you have produced all such materials so described that are
4 locatable after a diligent search of all locations at which such materials might plausibly exist.

5 E. Pursuant to Federal Rule of Civil Procedure 34, in responding to these requests, you must
6 search computerized files, emails, voice mails, work files, desk files, calendars and diaries, and any
7 other locations and sources if materials of the type to be produced might plausibly be expected to be
8 found there. At the time of production, you should provide a written list setting forth in detail each
9 specific source and location searched. The list must also identify, by name and position, all persons
10 conducting the search and their areas of search responsibility. You shall also provide a list describing the
11 specific source for each produced item as well as for each item withheld on a ground of privilege, using
12 the unique identifying numbers to specify documents or ranges.

13 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

14 1. Produce all documents concerning any communications between you and IXL related to
15 the allegations of the Complaint.

16 **RESPONSE:**

17 2. Produce all documents concerning any communications between you and Duane related
18 to the allegations of the Complaint, not including any attorney-client privileged communications.

19 **RESPONSE:**

20 3. Produce all documents concerning any communications between IXL and Duane related
21 to the allegations of the Complaint.

22 **RESPONSE:**

23 4. Produce all documents identified or referenced in your answers to Defendant's First Set
24 of Interrogatories.

25 **RESPONSE:**

1 5. Produce all non-privileged documents that support, contradict, refer, relate, or pertain to
2 the facts surrounding the allegations in your Complaint or to the defenses asserted by Defendant.

3 **RESPONSE:**

4 6. Produce all documents which constitute, reflect upon, or relate to any statements from
5 any person regarding any of the allegations within your Complaint, including drafts of such statements
6 and any correspondence regarding such statements.

7 **RESPONSE:**

8
9 7. Produce all documents evidencing any compensation Duane has received from any
10 source since January 8, 2015.

11 **RESPONSE:**

12 8. As to each expert witness you intend to have testify at any hearing or trial of this Lawsuit,
13 please produce:

- 14 a. Each expert witness's curriculum vitae;
- 15 b. A written report giving all the findings, opinions, and basis of opinions of each expert
16 witness;
- 17 c. The complete file of each expert witness, including all matters received by such
18 expert regarding this litigation; and
- 19 d. Copies of all literature, reports, and publications relied upon by each expert witness in
20 the formulation of his or her opinions in this matter.

21 **RESPONSE:**

22
23 9. Produce all documents, including medical files, related to all physicians, health care
24 providers, mental health professionals, therapists, or any other medical practitioners who have treated or
25 counseled Duane for mental anguish, depression, anxiety, emotional pain, suffering, inconvenience, loss
26 of enjoyment of life, humiliation, or any other mental illness or emotional pain before, during, and after
27 Duane's employment with IXL.

28 **RESPONSE:**

1 10. Produce all documents, including medical files, related to all physicians, health care
2 providers, or any other medical practitioners who have treated or counseled Duane for any and all
3 physical symptoms before, during, and after Duane's employment with IXL.

4 **RESPONSE:**

5 11. Produce all non-privileged appointment books, calendars, diaries, journals, log books,
6 notes, memos, emails, text messages (including, but not limited to, any type of messaging via an app or
7 social media site, such as Facebook), instant messages (including, but not limited to, "Gchat"),
8 Facebook postings, tweets, social media messages, or any other documents created by Duane during and
9 after Duane's employment with IXL relating to, describing, or discussing any alleged denial of
10 accommodation of his disability, discrimination, and/or retaliation by IXL or its employees.

11 **RESPONSE:**

12 12. Produce all communication, correspondence, emails, letters, text messages (including, but
13 not limited to, any type of messaging via an app or social media site, such as Facebook), instant
14 messages (including, but not limited to, "Gchat"), Facebook postings, tweets, any social media
15 messages, or any notes between Duane and any third party which discuss, relate to, reflect upon, or
16 contain information about any of the allegations in the Complaint, not including any attorney-client
17 privileged communications.

18 **RESPONSE:**

19 20. Produce any and all communications, correspondence, emails, letters, text messages
20 (including, but not limited to, any type of messaging via an app or social media site, such as Facebook),
21 instant messages (including, but not limited to, "Gchat"), Facebook postings, tweets, any social media
22 messages, or notes between Duane and IXL or any of IXL's current or former employees related to the
23 allegations in your Complaint.

24 **RESPONSE:**

25 14. Produce any and all documents that Duane has submitted to or filed with any
26 administrative agency, including (but not limited to) any documents submitted to you, the National
27
28

1 Labor Relations Board (the “NLRB”), and the California Department of Fair Employment and Housing
2 (“DFEH”).

3 **RESPONSE:**

4 15. Produce any and all documents that you or Duane have received from any administrative
5 agency, including the NLRB and the DFEH.

6 **RESPONSE:**

7
8 16. Produce any and all documents that Duane sent to or received from any person or entity
9 regarding his employment with IXL, including, but not limited to, any such documents sent to IXL or to
10 any of IXL’s employees.

11 **RESPONSE:**

12 17. Produce any and all non-privileged documents in your possession which mention IXL or
13 any of IXL’s employees, including any posts on any websites and/or social media sites.

14 **RESPONSE:**

15
16 18. Produce any and all non-privileged documents in Duane’s possession which mention IXL
17 or any of IXL’s employees, including any posts on any websites and/or social media sites.

18 **RESPONSE:**

19 19. Produce any and all non-privileged documents that support, contradict, or may be utilized
20 to calculate your or Duane’s alleged damages in this case.

21 **RESPONSE:**

22 20. Produce any and all non-privileged documents that support, contradict, or may be utilized
23 to determine Duane’s nonpecuniary losses, including emotional pain, suffering, inconvenience, loss of
24 enjoyment of life, and humiliation.

25 **RESPONSE:**

26
27 21. Produce any and all non-privileged documents showing that you or Duane mitigated (or
28 attempted to mitigate) any of your or his alleged damages in this case.

1 **RESPONSE:**

2 22. Produce Duane's state and federal income tax returns as filed for the years 2014, 2015,
3 and 2016, including any amendments thereto.

4 **RESPONSE:**

5
6 23. Produce all documents relating to Duane's efforts to obtain employment following his
7 employment with IXL, including, but not limited to, all resumes used by him, all correspondence
8 between him and prospective employers, all documents submitted by Duane to prospective employers or
9 persons whose assistance Duane sought in connection with his efforts to obtain employment, and all
10 documents provided to Duane by prospective employers.

11 **RESPONSE:**

12
13 Dated: December 18, 2017

Respectfully submitted,
Young Basile Hanlon & MacFarlane, P.C.

14 By: /s/ Natasha R. Menezes
15 **Jeffrey D. Wilson (Pro Hac Vice)**
wilson@youngbasile.com
16 **Natasha R. Menezes (Pro Hac Vice)**
menezes@youngbasile.com

17 -and-

18
19 **IMAI, RADLOCK, KEENEY & CORDERY, LLP**
R. Randy Wertz
rrwerts@itkc.com

20
21 Attorneys for Defendant
22 IXL Learning, Inc.

EXHIBIT C

YOUNG BASILE

YOUNG BASILE
HANLON & MACFARLANE P.C.
INTELLECTUAL PROPERTY LITIGATION | TECHNOLOGY

3001 WEST BIG BEAVER ROAD, SUITE 624
TROY, MICHIGAN 48064-3107

T: (248) 649-3333
F: (248) 649-3338

Ryan T. McCleary
mccleary@youngbasile.com
Direct Dial (248) 244-0130

October 28, 2015

Adrian Scott Duane

[REDACTED]
Oakland, CA 94606

Re: Adrian Scott Duane v IXL Learning
NLRB Case No. 20-CA-153625

Dear Mr. Duane:

IXL Learning withdraws the subpoena sent to you October 27, 2015 in the above-referenced matter and now serves the attached revised subpoena, which includes revisions to paragraph 6 of the definitions and instructions. Also enclosed is a check in the amount of \$67.53 as payment of the related witness and mileage fees.

Very truly yours,

Young Basile Hanlon & MacFarlane, PC



Ryan T. McCleary

cc: Ms. Cecily Vix (via email, with attachments)
David Marek (via email and U.S. Mail, with attachments)

FORM NLRB-31

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**To Adrian Scott Duane, [REDACTED] California 94606-1439As requested by Ryan T. McCleary / Young Basile Hanlon & MacFarlane, PCwhose address is 3001 West Big Beaver Road, Suite 624 / Troy, Michigan 48084-3107
(Street) (City) (State) (ZIP)YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE An Administrative Law Judge
of the National Labor Relations Boardat E.V.S. Robbins Courtroom, 901 Market Street, Suite 306in the City of San Francisco, Californiaon Thursday, November 5, 2015 at 9:00 a.m. or any adjournedor rescheduled date to testify in IXL Learning, Inc.
20-CA-153625
(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.65(c) (representation proceedings) and 29 C.F.R. Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

B-1-ORECNV

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at San Francisco, CADated: October 19, 2015

 A handwritten signature in black ink, appearing to read "Paul W. Romano".

Chairman, National Labor Relations Board

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

IXL 0188

Subpoena Duces Tecum No. B-1-ORECNV
Adrian Scott Duane
Case 20-CA-153625
Page 1 of 4

ATTACHMENT

Pursuant to §11 of the National Labor Relations Act, 29 U.S.C. §161, you are required to produce the documents set forth below.

DEFINITIONS AND INSTRUCTIONS

- 1) The term "IXL Learning" refers to IXL Learning, Inc. and its agents, successors and assigns.
- 2) The term "employee" or "employees" refers to all persons who have been, or currently are, employed by IXL Learning.
- 3) The term "Charging Party," "CP," or "you" refers to Adrian Scott Duane.
- 4) The term "Glassdoor" refers to Glassdoor, Inc. and its agents, successors and assigns.
- 5) The term "glassdoor.com" refers to any website operated by or for Glassdoor accessible using the glassdoor.com domain or subdomain of glassdoor.com.
- 6) The term "document" or "documents" means any existing printed, typewritten, handwritten or other recorded material of whatever character, including, but not limited to letters, correspondence, memoranda, minutes, notes, statements, affidavits, agreements, summaries, records of telephone conversations, telephone bills, recordings of personal conversations, interviews or meetings, transcripts, diaries, reports, charts, contracts, calendars, interoffice communications, books, records, tax records, bookkeeping and/or accounting work papers, canceled checks, accounts, accounts receivable records, ledgers, journals, purchase orders, invoices, bills of lading, billing slips, delivery records, receiving records, photographs, microfilm, audio or video tapes, voice mail messages, text messages, chat messages, pictures, material existing on computer software or hardware, computer tapes or disks and electronic mail, and all data contained thereon that may be retrieved, including material stored on hard disks, on any carbon, photographic or other duplicate copy of such material in the possession or control of, or available to, Charging Party or any attorney, agent, representative, or other person acting in cooperation with, in concert with, or on behalf of Charging Party. However, to the extent that any exist, confidential statements or affidavits provided to the Board shall not be considered a "document" or "documents" subject to production pursuant to this subpoena.
- 7) The term "concerning" means relating to, referring to, describing, evidencing or constituting.
- 8) Documents subpoenaed shall include all documents in the physical possession, custody or control of Charging Party.

Subpoena Duces Tecum No. B-1-ORECNV

Adrian Scott Duane

Case 20-CA-153625

Page 2 of 4

- 9) The terms "copy" or "copies" means exact and complete copies of original documents as they appeared when they first came into Charging Party's possession, custody or control. A copy may be accepted in lieu of original documents provided that the original documents shall be made available prior to the hearing or at the time of production for the purpose of verifying the accuracy of such copy or copies.
- 10) Any copies of original documents which are different in any way from the original, whether by interlineation, receipt stamp, notations, indication of copies sent or received, or otherwise, shall themselves be considered original documents and must be produced separately from the originals or copies of originals.
- 11) This request contemplates production of responsive documents in their entirety, without abbreviation or expurgation.
- 12) The term "person" or "persons" means any natural persons, corporations, partnerships, sole proprietorships, associations, organizations, trusts, joint ventures, or groups thereof.
- 13) Whenever used in this subpoena, the singular shall be deemed to include the plural, and vice versa; the present tense shall be deemed to include the past tense, and vice versa; references to parties shall be deemed to include any and all of their officers, agents and representatives; the masculine shall be deemed to include the feminine, and vice versa; the disjunctive "or" shall be deemed to include the conjunctive "and," and vice versa; and the words "each," "any," "every," and "all" shall be deemed to include each of the other words.
- 14) If any document responsive to any request herein is withheld from production on the asserted ground that it is privileged, identify and describe:
 - a) the privilege claimed;
 - b) the author;
 - c) the recipient;
 - d) the date of the original document;
 - e) the subject matter of the document.
- 15) If any document responsive to any request herein was, but no longer is, in Charging Party's possession, custody or control, identify the document (stating its date, author, subject, recipients, and intended recipients); explain the circumstances by which the document ceased to be in Charging Party's possession, custody or control; and identify (stating the person's name, title, business address and telephone number, and home address and telephone number) all persons known or believed to have the document or a copy thereof in their possession, custody or control.

v

Subpoena Duces Tecum No. B-1-ORECNV
Adrian Scott Duane
Case 20-CA-153625
Page 3 of 4

- 16) If any document responsive to any request herein was destroyed, discarded or otherwise disposed of for whatever reason, identify the document (stating its date, author, addressee(s), recipients and intended recipients, title and subject matter); explain the circumstances surrounding the destruction, discarding or disposal of the document, including the timing of the destruction, discarding or disposal of the document; and identify all persons known or believed to have the document or a copy thereof in their possession, custody or control.
- 17) All documents produced pursuant to this subpoena should be organized by the subpoena paragraph to which each document or set of documents responds, and labels referring to that subpoena paragraph should be affixed to each document or set of documents.
- 18) Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- 19) Counsel for IXL Learning, Inc. will be available to meet with Charging Party, or a designated or legal representative of Charging Party, at a mutually agreed-upon time and place before the return date of the subpoena for the purpose of examining and/or copying the documents subpoenaed and to enter into stipulations concerning the contents of the subpoenaed documents.
- 20) This request is continuing in character, and if additional responsive documents come to Charging Party's attention following the date of production, such documents must be promptly produced.

DOCUMENTS TO BE PRODUCED

- 1) Documents concerning Charging Party's employment at IXL Learning, including but not limited to notes, journals, diaries, calendar entries, chat messages and text messages.
- 2) Documents concerning any submission or posting by Charging Party to glassdoor.com, including but not limited to the posting referenced in paragraph 6(a) of the administrative complaint issued on July 29, 2015 by Region 20 of the NLRB.
- 3) Documents concerning any communications between Charging Party and Glassdoor.
- 4) Documents concerning Charging Party's communications, if any, with employees regarding terms and conditions of employment at IXL Learning.
- 5) Documents concerning Charging Party's communications, if any, with IXL Learning regarding terms and conditions of employment at IXL Learning.
- 6) Documents concerning Charging Party's termination by IXL Learning.

Subpoena Duces Tecum No. B-1-ORECNV
Adrian Scott Duane
Case 20-CA-153625
Page 4 of 4

- 7) Documents substantiating or refuting any statements made by Charging Party in any submission or posting by Charging Party to glassdoor.com, including but not limited to the posting referenced in paragraph 6(a) of the administrative complaint issued on July 29, 2015 by Region 20 of the NLRB.
- 8) Documents concerning any alleged discriminatory or retaliatory conduct by IXL Learning.
- 9) Documents concerning any job applications completed or submitted by CP, job interviews of CP, job searching by CP, offers of employment made to CP, or responses to offers of employment sent by CP from January 1, 2013 to the present.
- 10) Documents concerning any employment of CP from January 8, 2015 to the present.
- 11) Documents concerning any income earned by CP from January 8, 2015 to the present.
- 12) Documents, including but not limited to electronic messages, text messages, and chat messages, between you and IXL Learning.
- 13) Documents concerning IXL Learning business information obtained by you during your employment with IXL Learning.
- 14) Documents concerning any interviews, articles, statements, assertions, accounts, or descriptions given by or written by you concerning your employment with IXL Learning, termination from IXL Learning, or any allegation made by you against IXL Learning.
- 15) Documents concerning any unemployment claims made by you relating to your termination from IXL Learning.
- 16) Documents provided by you to either the Equal Employment Opportunity Commission or the National Labor Relations Board.
- 17) Documents which you believe support the statements and allegations made by you in your Charge dated June 3, 2015 and filed with the National Labor Relations Board.
- 18) Documents concerning the statements and allegations made by you in your Charge of Discrimination dated March 10, 2015 and filed with the Equal Employment Opportunity Commission.

Case 20-CA-153625

B-1-ORECNV

RETURN OF SERVICE

I certify that, being a person over 18 years of age, I duly served a copy of this subpoena

- by person
- by certified mail
- by registered mail
- by telegraph
- by leaving copy at principal office or place of business at

(Check method used.)

on the named person on

October 28, 2015

(Month, day and year)

Christine David

(Name of person making service)

(Official title, if any)

CERTIFICATION OF SERVICE

I certify that named person was in attendance as a witness at

on

(Month, day or days, and year)

(Name of person certifying)

(Official title)