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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 U.S. EQUAL EMPLOYMENT
16 OPPORTUNITY COMMISSION,

17 Plaintiff,

18 and

19 ADRIAN SCOTT DUANE,

20 Plaintiff Intervenor,

21 vs.

22 IXL Learning, Inc.,

23 Defendant.

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

**DECLARATION OF AMI SANGHVI IN
SUPPORT OF EEOC AND PLAINTIFF-
INTERVEOR’S MOTION FOR PARTIAL
SUMMARY JUDGEMENT**

Date: September 20, 2018
Time: 10:00 am
Courtroom: 4, 17th Floor
Judge: Hon. Vincent Chhabria

24 I, Ami Sanghvi, declare as follows:

25 1. I am an attorney for the plaintiff in this action, the U.S. Equal Employment
26 Opportunity Commission (EEOC). I am the lead attorney responsible for the litigation of the above-
27 caption case.

28 **EEOC Process**

1. Attached hereto and incorporated herein as **Exhibit 1** is a true and correct copy of
Adrian Scott Duane’s Charge of Discrimination (EEOC_000003), dated March 10, 2015.

1 3. Attached hereto and incorporated herein as **Exhibit 2** is a true and correct copy of the
2 California Dept. of Fair Employment & Housing Notice of Filing and Right-to-Sue
3 (EEOC_000046), indicating a filing date of May 13, 2015.

4 4. Attached hereto and incorporated herein as **Exhibit 3** is a true and correct copy of a
5 letter from the San Francisco District EEOC Office advising Duane that his charge was
6 automatically being dual filed DFEH and other case processing procedures (EEOC_000047).

7 5. Attached hereto and incorporated herein as **Exhibit 4** is a true and correct copy of a
8 letter from the New York District EEOC Office transferring Duane's charge to the San Francisco
9 District Office for investigation (EEOC_000048), dated May 6, 2015.

10 6. Attached hereto and incorporated herein as **Exhibit 5** is a true and correct copy of the
11 EEOC letter of Determination (EEOC_000001), dated April 22, 2016.

12
13 **NLRB Process**

14 7. Attached hereto and incorporated herein as **Exhibit 6** is a true and correct copy of
15 Duane's charge (IXL 0001) filed with the National Labor Relations Board (NLRB) on June 3, 2015.

16 a. **Exhibit 6-1** is a true and correct copy of the NLRB Order dismissing the
17 Complaint (IXL 0779) on June 10, 2016.

18 8. Attached hereto and incorporated herein as **Exhibit 7** is a true and correct copy of the
19 NLRB's Administrative Law Judge's Order Granting [Duane's] Petition to revoke Subpoena B-1-
20 OREC NV, in Part, and Denying [Duane's] Petition to Revoke in Part (IXL 0200), dated November
21 5, 2015.

22 a. **Exhibit 7-1** is a true and correct copy of an excerpt from the NLRB Hearing
23 transcript dated November 5, 2015.

24 **Discovery**

25 9. The EEOC propounded three sets of Interrogatories on Defendant IXL.

26 10. Attached hereto and incorporated herein as **Exhibit 8** is a true and correct copy of
27 Defendant's Answers to EEOC's First Set of Interrogatories, dated January 29, 2018.
28

1 11. Attached hereto and incorporated herein as **Exhibit 9** is a true and correct copy of
2 Defendant's Answers to EEOC's Third Set of Interrogatories, dated April 9, 2018.

3 12. The EEOC propounded three sets of Requests for Documents on Defendant IXL.

4 13. Attached hereto and incorporated herein as **Exhibit 10** is a true and correct copy of
5 Defendant's Response to EEOC's First Set of Requests for Production of Documents, dated January
6 29, 2018.

7 14. The EEOC propounded one set of Requests for Admissions on Defendant IXL.

8 15. Attached hereto and incorporated herein as **Exhibit 11** is a true and correct copy of
9 IXL's Response to Plaintiff EEOC's First Request for Admissions, dated April 9, 2018.

10 16. Attached hereto and incorporated herein as **Exhibit 12** is a true and correct copy of
11 IXL's Corrected Amended Initial Disclosures, dated February 21, 2018.

12 17. Attached hereto and incorporated herein as **Exhibit 13** is a true and correct copy of
13 EEOC's Second Supplemental Initial Disclosures, dated April 13, 2018.

14 18. Attached hereto and incorporated herein as **Exhibit 14** is a true and correct copy of
15 EEOC's Responses and Objections to Defendant's First Set of Interrogatories to Plaintiff EEOC,
16 dated January 29, 2018.

17
18 **Meet & Confer Efforts**

19 19. On May 24, 2018, I approached opposing counsel with a request to meet and confer
20 about Defendant's affirmative defenses.

21 20. On June 12, 2018, I conferred telephonically with Natasha Menezes, counsel for IXL
22 and David Marek, counsel for Plaintiff-Intervenor to discuss, inter alia, Defendant's affirmative
23 defenses.

24 21. During the phone call on June 12, 2018, Ms. Menezes indicated that IXL was willing
25 to withdraw Affirmative Defense No. 6 (NLRA Preemption) against the EEOC.

26 22. In subsequent email communications, Ms. Menezes agreed that the EEOC met all
27 conditions precedent, but said that IXL continued to assert that Duane had not met all conditions
28 precedent to filing his claims.

1 23. On June 27, 2018, I sent opposing counsel a letter detailing the stipulations, as well as
2 a proposed stipulation regarding one of Duane’s factual assertions, and provided basic arguments for
3 why Defendant should withdraw certain affirmative defenses.

4 24. Attached hereto and incorporated herein as **Exhibit 15** is a true and correct copy of
5 the EEOC’s letter to IXL counsel, dated June 27, 2018.

6 25. On July 6, 2018, Ms. Menezes replied via electronic mail and requested that Duane
7 withdraw his state law claim and any factual theories not asserted by the EEOC. Ms. Menezes
8 indicated that IXL was only “willing to reassess its affirmative defenses if Duane was willing, in
9 good faith, to do the same in light of the Court’s Order [Granting the Motion to Intervene].”

10 26. On July 11, 2018, I responded to Ms. Menezes’s email on behalf of Plaintiffs, (1)
11 confirming Duane’s withdrawal of the factual assertion from his federal and state claims that IXL
12 retaliated against him because he reported discrimination to his manager David Keyes; (2)
13 communicating that Duane would not withdraw his state law claims; (3) explaining that I sought to
14 avoid the inefficiency of the EEOC moving affirmatively for SJ on defenses that IXL planned to
15 abandon; and (4) asking again whether IXL counsel was willing to either withdraw some affirmative
16 defenses or engage in a meet and confer.

17 27. As of the date of this filing, IXL counsel has not responded to my July 11, 2018
18 email.

19 28. Attached hereto and incorporated herein as **Exhibit 16** is a true and correct copy of
20 Ms. Menezes’s email communication to the EEOC dated July 6, 2018 and my response dated July
21 11, 2018.¹

22
23 **Depositions**

24 29. The EEOC noticed and deposed a Rule 30(b)(6) deposition of IXL; CEO, Paul
25 Mishkin; Senior Program Manager, David Keyes; VP of Curriculum, Kate Mattison; Former HR
26 Coordinator, Maricela Prado; Special Projects Manager, Jeremy Murphy; Lead Curriculum

27 _____
28 1 For the purposes of brevity and to protect a document IXL deems confidential, the EEOC only
attached the relevant portion of the longer email thread.

1 Designer, Isidora Milin; and Systems Administrator, Gary Yee.

2 30. Attached hereto and incorporated herein as **Exhibit 17** is a true and correct copy of
3 transcript excerpts from the deposition of Paul Mishkin as IXL Learning's 30(b)(6) representative
4 and in his personal capacity, dated March 7, 2018.

5 31. Attached hereto and incorporated herein as **Exhibit 18** is a true and correct copy of
6 excerpts of the deposition transcript of David Keyes, dated March 5, 2018.

7 32. The EEOC identified 27 individuals in its Second Supplemental Disclosures, attached
8 hereto as Exhibit 13.

9 33. IXL deposed Plaintiff-Intervenor, Adrian Scott Duane; Duane's ex-girlfriend, Jenna
10 Mandis; and Duane's former co-worker, Nemo Curiel.

11 34. Attached hereto and incorporated herein as **Exhibit 19** is a true and correct copy of
12 excerpts of the deposition transcript of A. Scott Duane, dated March 27, 2018.

13 **Mitigation Documents**

14 35. Attached hereto and incorporated herein as **Exhibit 20** is a compilation of true and
15 correct copies of some of Duane's job search efforts through referrals and job search platforms, after
16 IXL terminated him, including the following:

- 17 a. **Exhibit 20-1:** Duane's application for a Data Scientist position at Microsoft
18 on January 20, 2015 (EEOC_000933-EEOC_000935; EEOC_000944).
19 b. **Exhibit 20-2:** Duane's general application to MIND on January 22, 2015
20 (EEOC_000482-EEOC_000487).
21 c. **Exhibit 20-3:** Duane's enrollment for Hired.com on January 27, 2015
22 (EEOC_000952).
23 d. **Exhibit 20-4:** Duane's inquiries about Scientist positions at Pandora on
24 February 10, 2015 (EEOC_000921).
25 e. **Exhibit 20-5:** Duane's application for a Member of Technical Staff position at
26 Salesforce on February 13, 2015 (EEOC_000442-EEOC_000445;
27 EEOC_000602).
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- f. **Exhibit 20-6:** Duane’s inquiries about potential instructor position at the Center for Talented Youth (CTY) in Santa Cruz on March 20, 2015 (EEOC_000435-EEOC_000437).
- g. **Exhibit 20-7:** Duane’s application to make the San Diego Pride organization website accessible on March 27, 2015 (EEOC_000429-EEOC_000431).
- h. **Exhibit 20-8:** Duane’s involvement with a career coach at the Bay Area Video Coalition (BVAC) on April 1, 2015 (EEOC_000424-EEOC_000428; EEOC_000512-EEOC_000515).

36. Attached hereto and incorporated herein as **Exhibit 21** is a compilation of true and correct copies of some of Duane’s job applications after IXL terminated him, including the following:

- a. **Exhibit 21-1:** Duane’s application for a Front End Engineer position at Study.com on January 13, 2015 (EEOC_000460-EEOC_000462; EEOC_000622-EEOC_000623).
- b. **Exhibit 21-2:** Duane’s application for a Product Pro position at Piazza on January 13, 2015 (EEOC_000457-EEOC_000459).
- c. **Exhibit 21-3:** Duane’s application for a Research & Analytics Lead position at Kizoom on January 26, 2015 (EEOC_000454-EEOC_000456).
- d. **Exhibit 21-4:** Duane’s application for a Student Data Analyst position at Caliber Schools on February 1, 2015 (EEOC_000449-EEOC_000452; EEOC_000922-EEOC_000924).
- e. **Exhibit 21-5:** Duane’s application for a Data Engineering position at EdSurge on March 19, 2015 (EEOC_000438-EEOC000440).
- f. **Exhibit 21-6:** Duane’s application for an Associate Software Developer position at Salesforce on March 25, 2015 (EEOC_0006000).
- g. **Exhibit 21-7:** Duane’s application for a software or data position at Khan Academy on March 26, 2015 (EEOC_000432-EEOC_000434).
- h. **Exhibit 21-8:** Duane’s application for a Math Curriculum and Assessment

1 Designer position at Edulastic on April 4, 2015 (EEOC_000421-
2 EEOC_000423; EEOC_000607).

- 3 i. **Exhibit 21-9:** Duane's application for a Software Engineer position at Honk
4 on November 11, 2015 (EEOC_000403-EEOC_000409).
- 5 j. **Exhibit 21-10:** Duane's application for Backend Engineer at Persist IQ on
6 November 11, 2015 (EEOC_000410-EEOC_000413).
- 7 k. **Exhibit 21-11:** Duane's application for a Full Stack Engineer position at
8 Sensor Tower on November 11, 2015 (EEOC_000414-EEOC_000416).
- 9 l. **Exhibit 21-12:** Duane's application for a Ruby on Rails Developer position at
10 Customer Lobby on November 14, 2015 (EEOC_000401-EEOC_000402).
- 11 m. **Exhibit 21-13:** Duane's application for a Customer Success Engineer position
12 at OpenDoor on November 17, 2015 (EEOC_000399-EEOC_000400).
- 13 n. **Exhibit 21-14:** Duane's application for a Front End Engineer position at
14 Robert Half Technology on November 19, 2015 (EEOC_000397-
15 EEOC_000398).
- 16 o. **Exhibit 21-15:** Duane's application for an Intern, Member of Technical Staff
17 position at Salesforce on November 19, 2015 (EEOC_000599).
- 18 p. **Exhibit 21-16:** Duane's application for a Front End Engineer position at
19 Amazon on November 19, 2015 (EEOC_000665).

20 37. Attached hereto and incorporated herein as **Exhibit 22** is a compilation of true and
21 correct copies of records documenting unsuccessful outcomes for some job applications Duane made
22 after IXL terminated him, including the following:

- 23 a. **Exhibit 22-1:** Rejection from Education Portal for the position of Content
24 Strategist, dated January 20, 2015(EEOC_000962).
- 25 b. **Exhibit 22-2:** Rejection from Kizoom for the position of Research &
26 Analytics Lead, dated January 30, 2015 (EEOC_000606).
- 27 c. **Exhibit 22-3:** Rejection from Microsoft for the position of data scientist,
28 dated February 6, 2015 (EEOC_000936).

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- d. **Exhibit 22-4:** Rejection from Kink dated March 6, 2015 (EEOC_000441).
- e. **Exhibit 22-5:** Rejection from Khan Academy for the position of Product Manager, dated March 26, 2015 (EEOC_000596).
- f. **Exhibit 22-6:** Rejection from Insight Health Data Science Fellows Program dated May 19, 2015 (EEOC_000604).
- g. **Exhibit 22-7:** Rejection from No RedInk on November 19, 2015 (EEOC_000598).
- h. **Exhibit 22-8:** Rejection from Robert Half Technology for the position of Front End Engineer, dated November 19, 2015 (EEOC_000603).
- i. **Exhibit 22-9:** Rejection from Remind on November 24, 2015 (EEOC_000396).
- j. **Exhibit 22-10:** Rejection from Khan Academy for the position of Software Developer on November 26, 2015 (EEOC_000621).

38. Attached hereto and incorporated herein as **Exhibit 23** is a compilation of true and correct copies of documents demonstrating some of the courses Duane took to further develop his skill sets after IXL terminated him, including emails confirming:

- a. **Exhibit 23-1:** Enrollment in “Reporting Data and Conducting Reproducible Research”, dated January 13, 2015 (EEOC_000951).
- b. **Exhibit 23-2:** Participation in “Mathematical Biostatistics Boot Camp 1” dated January 27, 2018 (EEOC_001005).
- c. **Exhibit 23-3:** Participation “R Programming” dated February 1, 2015 (EEOC_000959).
- d. **Exhibit 23-4:** Participation in “Getting and Cleaning Data” dated February 1, 2015 (EEOC_000968).
- e. **Exhibit 23-5:** Enrollment in “Obtaining Data” dated February 2, 2015 (EEOC_000975).
- f. **Exhibit 23-6:** Enrollment in “Data Analysis” dated February 8, 2015 (EEOC_0001004).

- 1 g. **Exhibit 23-7:** Enrollment in “Computational Methods for Data Analysis”
2 dated February 9, 2015 (EEOC_001012).
- 3 h. **Exhibit 23-8:** Participation in “Exploratory Data Analysis” dated March 6,
4 2015 (EEOC_001008).
- 5 i. **Exhibit 23-9:** Participation in “Statistical Inference” dated March 6, 2015
6 (EEOC_001010).
- 7 j. **Exhibit 23-10:** Participation in “Algorithms, Part I” dated March 6, 2015
8 (EEOC_001014).
- 9 k. **Exhibit 23-11:** Participation in “Data Analysis and Statistical Inference”
10 dated May 20, 2015 (EEOC_001011).

11 39. Attached hereto and incorporated herein as **Exhibit 24** is a selection of true and
12 correct copies of job opportunities that Duane pursued on Craigslist after IXL terminated him,
13 including the following:

- 14 a. **Exhibit 24-1:** Application for a teacher position on July 28, 2015
15 (EEOC_000475-EEOC_000477).
- 16 b. **Exhibit 24-2:** Application for a support analyst position on July 28, 2015
17 (EEOC_000478-EEOC_000480).
- 18 c. **Exhibit 24-3:** Application for an after-school math teaching position on July
19 28, 2015 (EEOC_000660-EEOC_000662).
- 20 d. **Exhibit 24-4:** Application for a math tutoring position on July 30, 2015
21 (EEOC_000472-EEOC_000474).

22 40. Attached hereto and incorporated herein as **Exhibit 25** is a true and correct copy of
23 Duane’s admission into the App Academy Bootcamp program (EEOC_000624-EEOC_000625),
24 dated May 7, 2015.

25 41. Attached hereto and incorporated herein as **Exhibit 26** is a true and correct copy of
26 the signed Job Search Agreement required by App Academy for participation in the Bootcamp
27 program (EEOC_000539-EEOC_000540), dated May 13, 2015.

28 42. Attached hereto and incorporated herein as **Exhibit 27** is a true and correct copy of an

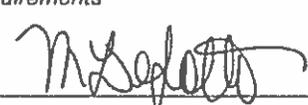
1 offer of employment from Adam Frey at Wikispaces (EEOC_000641-EEOC_000644), dated
2 December 16, 2015.

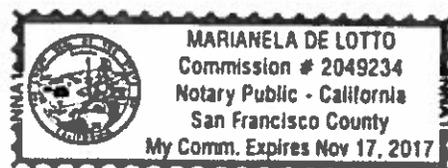
3 43. Attached hereto and incorporated herein as **Exhibit 28** is a true and correct copy of an
4 offer of employment from App Academy (EEOC_000605), dated December 14, 2015.

5
6 I declare under penalty of perjury under the laws of the United States that the foregoing is
7 true and correct and that this declaration was executed on July 19, 2018 in San Francisco, CA.

8 /s/ Ami Sanghvi
9 AMI SANGHVI
10 Senior Trial Attorney
11 Equal Employment Opportunity Commission
12 450 Golden Gate Avenue, 5th Fl. W., POB 36025
13 San Francisco, CA 94102
14 (415) 522-3071
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EEOC Form 5 (5/01)

CHARGE OF DISCRIMINATION <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		Charge Presented to: Agency(ies) Charge No(s): _____ FEPA X EEOC 500-2015-02025	
CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING and EEOC <small>State or local Agency, if any</small>			
Name (indicate Mr. Ms. Mrs) Mr. Adrian Scott Duane			REDACTED
Street Address REDACTED		City, State and ZIP Code Oakland, CA 94606	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below)			
Name IXL Learning		No. Employees, Members 50+	Phone No. (Include Area Code) 650-372-4040
Street Address 777 Mariners Island Boulevard		City, State and ZIP Code San Mateo, CA 94404	
Name		No. Employees, Members	Phone No. (Include Area Code)
Street Address		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es)) ___ RACE ___ COLOR <u>X</u> SEX ___ RELIGION ___ NATIONAL ORIGIN ___ X RETALIATION ___ AGE <u>X</u> DISABILITY ___ OTHER (Specify below)		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 7/10/2013 1/8/2015 ___ CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attached extra sheet(s)):		EQUAL EMPLOYMENT OPPORTUNITY COMMISSION NEW YORK DISTRICT OFFICE <div style="border: 1px solid black; padding: 5px; display: inline-block;"> MAR 17 2015 </div> DATE RECEIVED	
Please see the attached EEOC Charge of Discrimination.			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY – When necessary for State and Local Agency Requirements 	
I declare under penalty of perjury that the above is true and correct. March 10, 2015 Date  Charging Party Signature		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT  SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year) March 10, 2015	



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Contra Costa }

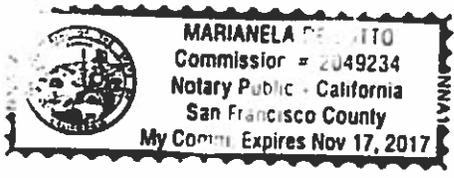
On 3-10-2015 before me, Marianela Re Jotto, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Adrian Scott Campe Luane
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal
Signature [Handwritten Signature]
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

CHARGE OF DISCRIMINATION

A. Scott Duane v. IXL Learning

Introduction

1. I am a 30-year-old transgender man. At all times relevant to this action, I was disabled due to complications from phalloplasty on November 3, 2014, a surgery related to my transition. I believe that IXL Learning (“IXL”) discriminated against me on the basis of my sex, gender identity, gender expression, disability, perceived disability, request for reasonable accommodation, and decision to take protected medical leave, and retaliated against me for complaining of this discrimination by terminating my employment.

2. I was employed by IXL from July 10, 2013 until it terminated my employment on January 8, 2015.

3. IXL is a web-based educational software company with its headquarters at 777 Mariners Island Boulevard, Suite 600, in San Mateo, California. IXL employs roughly 200 employees; although most work out of its San Mateo office, many employees work remotely from locations throughout the United States.

4. At IXL, I worked as a Product Analyst as part of the Product Development team in its San Mateo headquarters. Among other tasks, I wrote and reviewed design specifications for the IXL website and aligned IXL skills to state educational standards, including the Common Core. I also designed customized iPad and Android tablet keyboards and graphing components for our mobile apps. The IXL content team considered me the “expert” on our products for mobile platforms.

5. Throughout my employment with IXL, I was qualified for my position and performed my duties in a professional and competent manner. I earned excellent performance

reviews, received multiple awards for my work, and was considered an expert by my team for my contributions to all aspects of our mobile platforms.

6. IXL knew that I am transgender and discriminated against me after I had surgery in November 2014 and attempted to return to work after taking approximately two months of FMLA/CFRA leave. IXL refused to allow me to take sick leave prior to my surgery and misinformed me of the company's policies regarding paid disability leave. The company also refused to grant me reasonable accommodations for my disability during my recovery from surgery, even though I repeatedly requested this accommodation, offered to provide documentation from my physician, and specifically requested an accommodation that the company routinely grants to non-disabled, heterosexual, and cisgender employees for personal and professional reasons.

7. On December 30, 2014, the same day that I returned to work after my FMLA/CFRA leave, I posted an anonymous review on Glassdoor.com complaining that the company discriminates against minority or non-conforming employees in work assignments, promotions, raises, and flexible hours. At least two other IXL employees who are currently employed with the company have posted negative reviews of IXL on Glassdoor.com, and to my knowledge neither have been investigated, reprimanded, or terminated.

8. On January 6, 2015, I met with my supervisor to complain that I felt that the company had discriminated against me by failing to work with me to develop a reasonable accommodation for my disability. IXL terminated my employment on January 8, 2015, ostensibly on the basis of my Glassdoor.com review.

9. IXL terminated my employment two days after I complained of disability discrimination and within two weeks of my return from FMLA/CFRA leave and requests for

reasonable accommodation. IXL knew that I was disabled due to a complication of gender confirmation surgery.

A. I Was Qualified For My Position At IXL And Was Recognized By My Team, Supervisor, And CEO For My Outstanding Performance.

10. I joined IXL in July 2013 after receiving my Ph.D. in mathematics in June 2013 from the University of California, San Diego, with a G.P.A. of 3.93. I excelled at IXL and was recognized for my outstanding performance. I was qualified for my position and performed my duties in a professional and competent manner throughout my employment with the company.

11. IXL gave me three performance reviews over the course of my employment with the Company. I received my first review on September 12, 2013, after 60 days of employment at IXL, from Kate Mattison. Ms. Mattison supervised me between July 10, 2013, and December 31, 2013. Ms. Mattison rated all aspects of my performance between a 3 and 4 on a 1-5 scale, denoting performance that “consistently meets” or was “consistently above” expectations. In this review, Ms. Mattison noted that “Scott has a very positive attitude and great enthusiasm. He is willing to tackle any project and volunteers to take on new responsibilities.”

12. I received my second performance review from Ms. Mattison after 90 days of employment with IXL on November 6, 2013. In this review, Ms. Mattison also ranked my performance between a 3 and 4, indicating that my performance consistently met or was above IXL’s expectations.

13. I received my third performance review in or around January 2014 from David Keyes, who supervised me from January 1, 2014, until IXL terminated my employment on January 8, 2015. Mr. Keyes rated all aspects of my performance at a 4 or 5, and noted that I had improved in all areas that Ms. Mattison had outlined opportunities for growth. Mr. Keyes also praised my work handling mobile device platforms, and for becoming a leader in mobile testing. As a result

of this review, Mr. Keyes assigned me the project of designing our mobile icons for precalculus so that I could engage in additional creative roles within the Company.

14. I received my second performance review in or around January 2014 from David Keyes, who supervised me from January 1, 2014, until IXL terminated my employment on January 8, 2015. Mr. Keyes rated all aspects of my performance at a 4 or 5, and noted that I had improved in all areas that Ms. Mattison had outlined opportunities for growth. Mr. Keyes also praised my work handling mobile device platforms, and for becoming a leader in mobile testing. As a result of this review, Mr. Keyes assigned me the project of designing our mobile icons for precalculus so that I could engage in additional creative roles within the company.

15. IXL awarded me two “team trophy” awards for my work. Mr. Keyes awarded me a “team trophy” for designing icons for the precalculus grade, which appear on IXL’s iPad app. Mr. Keyes awarded me a second “team trophy” for my design of an innovative mobile keyboard, which was well-received by our mobile software engineers.

16. IXL’s CEO, Paul Mishkin, also recognized my excellent work for the company. IXL develops “skills,” which are learning modules addressing very specific topics. Skills typically take the form of progressively difficult series of questions in a given subject area. In August 2014, Mr. Mishkin stated that he was impressed by my work designing precalculus skills in sinusoidal graphing, matching polynomial functions and graphs, writing series in sigma notation, and finding recursive formulae for sequences. Mr. Keyes made these statements praising my work orally during a meeting that included myself, Mr. Keyes, and Ms. Mattison.

17. On or around September 2014, Ms. Mattison sent an email to myself and Mr. Keyes praising the skills that I designed for the August 2014 product release.

18. Throughout my employment, IXL's Sales team used skill sets that I designed to market our product to potential customers at conferences and other industry events. The sinusoidal graphing skill that I developed was particularly popular among math teachers and school principals.

B. IXL Knew That I Am Transgender.

19. Although I never formally came out to IXL as a transgender person, this information is readily available online. I am involved in transgender activism, and have been for some time. Several weeks after I began work at IXL, a project that I had worked on as a graduate student in San Diego garnered significant media attention. As a result, I became a fairly significant name in the transgender advocacy community. I also write for The Advocate, one of the preeminent publications for the Lesbian, Gay, Bisexual, and Transgender ("LGBT") community.

20. A simple Google search of "Adrian Scott Duane" reveals that I am transgender; indeed, my byline on the Advocate states "Dr. ADRIAN SCOTT DUANE is a math nerd, an activist, and a transsexual man. He currently designs math learning software in the Bay Area."

21. On July 12, 2013, IXL hosted a "new employee" activity which involved an urban scavenger hunt in San Francisco. One "challenge" in the scavenger hunt involved having a female team member draw the Golden Gate Bridge on a male team member's chest using lipstick. I volunteered to be drawn on. Karen Penner, IXL's Head of Recruiting, drew on my chest. My chest has obvious scarring from a bilateral mastectomy, known as "top surgery," which I had several years before as part of my transition. Another team member took a picture of Ms. Penner drawing on my chest, which the company used on a slide show later that day and saved to the "fun" folder in IXL's shared drive.

22. During my employment with IXL, I disclosed my transgender status to four employees. I first disclosed my status in August 2013 to an employee whom I regard as a personal friend. We frequently discussed my transgender status on the office's instant messenger program.

23. On or around August 2013, a project I had worked on in San Diego called "Visible Bodies" received press coverage in The Advocate and the Huffington Post, with my name attached to the project. I sent these articles to the employee who knew that I was transgender.

24. On or around September 2013, I went to lunch with Maricela Prado (a Human Resources employee, who was later promoted to lead Human Resources in October 2014), Ms. Penner, and another employee. Ms. Prado asked me if I like to date men or women, and I responded that gender is not the most important factor for me. However, I noted that I mostly date men.

25. On or around September 2013, Michael Pi, (a member of IXL's Sales team) and I attended a recruiting conference at Santa Clara University, standing together at a table for approximately three hours. During this time, Mr. Pi asked me a number of questions about being gay, and mentioned a transgender student he taught when he worked as a high school teacher several years before. Even though this student was male-to-female transgender, Mr. Pi referred to the student as a "he." I corrected Mr. Pi as to the appropriate gender pronoun for this student, and offered advice as to how to handle gender difference in the classroom. When Mr. Pi asked why I knew so much about transgender youth, I told him that I had worked with LGBT teens at Hillcrest Youth Center in San Diego while studying for my Ph.D.

26. In November 2013, I attended a private party in San Francisco hosted by Chaz Bono, a well-known transgender advocate. I mentioned that I attended this party to Ms. Penner

the following Monday. Ms. Penner asked, "Isn't she Sonny and Cher's kid?" I corrected Ms. Penner, stating that Mr. Bono is a "he."

27. A friend of mine tagged me on Facebook as having attended Mr. Bono's event. At the time, I was Facebook friends with Mr. Pi. I believe that Mr. Pi saw this posting.

28. Also in December 2013, I was engaged in the process of editing an anthology titled "Letters For My Siblings," in collaboration with another transgender author. This book is a collection of narratives by non-binary and genderqueer authors. I mentioned that I was editing this book to Tatum Radcliffe, an administrative assistant in Human Resources who works closely with Ms. Prado and Ms. Penner. I also mentioned the subject matter of the book. Ms. Radcliffe asked me how I had become engaged in this work, and I told her that I had a good friend who is genderqueer.

29. In or around January 2014, Gary Yee, an information technology employee, saw me in the on-site gym locker room and asked about the scars on my chest. I told Mr. Yee that I had surgery, but did not specify further. Mr. Yee continued to ask me questions, asking why I had surgery. I attempted to evade his line of questioning by stating that I had surgery to correct a growth which needed to be removed.

30. Although, to my knowledge, only Mr. Pi and Mr. Yee asked directly about my transgender status and physical appearance, many other male employees of IXL saw me in the gym locker room. These employees included Jeffrey Peterson, an employee in the Sales department who attended the same high school with me before my transition, and Mark Ritterhoff, a senior software developer who requested to become my Facebook friend and expressed confusion when I declined his request.

31. I had a preliminary surgical procedure in February 2014 with Dr. Curtis Crane, a physician in San Francisco who focuses on gender confirmation surgery. A simple Google search of Dr. Crane reveals that he and his practice work almost exclusively with the transgender community.

32. I was out of the office for one week following my February surgery. When I returned to work, I was unable to speak properly due to side effects from medications and was limping slightly. At least one IXL employee (I believe Ms. Penner) asked me why I was unable to speak and for details regarding my surgery. I stated that I was missing a mucous membrane somewhere on my body, so my surgeon had taken some from my mouth to compensate.

33. In or around March 2014, Mr. Peterson began working at IXL in its Sales department. During a casual conversation at the office, Mr. Peterson and I realized that we had attended the same high school in Edina, Minnesota. Mr. Peterson stated that he did not remember me, I told Mr. Peterson that I did remember him, but stated that I was not surprised that he did not remember me because I had not been around much in high school. I added this disclaimer because I was concerned that Mr. Peterson could look me up in an old high school year book, which showed me before my transition.

34. Also in or around March 2014, I went out in a large group of colleagues and friends including Ms. Prado, Ms. Penner, Mr. Pi, and Ms. Radcliffe for karaoke. I brought a friend with me, who is also a transgender man but frequently reads as more female or gender ambiguous than I do.

35. Between March and June, 2014, I was engaged in organizing work for Transgress Press, a publishing company that exclusively publishes transgender titles. We planned to publish the book Manning Up: Transsexual Men on Finding Brotherhood, Family, and Themselves in late

May, 2014. I had written a piece for this book and was helping to organize the release party in San Francisco. I mentioned to Ms. Penner and another employee that I had written a piece for an anthology by and for men titled Manning Up, though I did not tell them that it focused on transgender men, and did not tell them the subtitle.

36. During this time, I made a video trailer for the book, and sent this link to three employees whom I regard as personal friends, and to whom I had disclosed my transgender status.

37. Two of my work friends to whom I had disclosed that I am transgender attended the release party for Manning Up. Another colleague whom I did not know and who did not, to my knowledge, know of my transgender status also expressed interest in attending. My two work friends told the third coworker that she could not attend the party, though I do not know what reason they gave her.

38. In July 2014, I began dating my partner, Jenna. I mentioned my new relationship to several colleagues, including Jeremy Murphy, with whom I shared a cubicle. I never disclosed my status to Mr. Murphy. Mr. Murphy asked whether this was my first time dating a woman, and I responded that it was not.

39. On or around April or May of 2014, Mr. Pi specifically asked another coworker about the scars on my chest, and asked, "Did Scott used to be a girl?" This coworker relayed that conversation to me, and stated that she attempted to deflect the question without answering affirmatively or negatively. This incident indicated to me that my gender was the subject of discussion by at least some of my professional colleagues; what's more, this incident indicated to me that IXL fostered an environment that accepted such discussion and did nothing to discourage workplace incidents hostile to queer and transgender employees.

40. Mr. Pi added me on Facebook shortly after I joined the company, and I accepted his request. I avoided discussing that I am transgender on my Facebook feed, but posted articles about trans-related topics. I later removed Mr. Pi from my Facebook friends list after he asked another employee whether I am transgender. I was concerned that Mr. Pi might inadvertently “out” me as transgender during a conversation with another employee. Mr. Pi actively socializes with many of my colleagues at IXL in different departments, and seemed unaware of the damage that being outed as transgender can do to an employee’s career and personal life. Like many employees at IXL, I believe that Mr. Pi received no training as to how to respect other employees’ privacy in the workplace with respect to gender identity, gender orientation, and gender expression.

41. On December 11, 2014, Jenna and I attended IXL’s Christmas party. We did not stay very long, as I was still in the process of recovering from surgery. Jenna met many of my colleagues, including Ms. Prado, Mr. Murphy, Mr. Keyes, and Ms. Penner. I introduced Jenna to my colleagues as my partner.

42. I believe that bringing Jenna to the IXL Christmas party raised questions regarding my gender expression and identity among my colleagues. Jenna has short hair and frequently wears “men’s” clothing, and others frequently read her gender presentation as that of a stereotypically gay woman. I am often perceived as a gay man, and when we appear together, others often question our sexual orientations and our gender identities and expressions because we do not fit into neat categories. For these reasons, bringing Jenna to my office Christmas party may have indicated to my coworkers that I am transgender or that my gender expression and identity fall outside of the accepted gender binary.

43. I believe that IXL's formal policies and workplace environment fostered a culture of discrimination against employees who do not conform to accepted gender roles, identities, and expression. In addition to the conduct directed towards me, IXL's formal content restrictions for our software reinforced stereotypical gender roles. When I began working for the Company in July 2013, I noticed that IXL's content restrictions for mathematics word problems included a provision that stated, to the best of my recollection, "Activities in word problems should be gender appropriate. For example, a problem like, 'Tim went shopping for skirts' should never appear." I found these gender stereotype-reinforcing restrictions hostile to employees whose gender identity and expression may not conform to the "gender appropriate" behaviors that IXL required that our site's content reinforce. I verbally discussed my concerns with three other employees.

C. IXL Did Not Object To My Flexible Schedule Before I Became Disabled.

44. During my January 2014 performance review and before I became disabled, I asked Mr. Keyes about my work schedule. I am involved in community organizing work, and would occasionally work irregular hours—for example, by coming in at 7:00am and working until 3:30pm, or beginning work at 11:00am and working until 7:30pm. I brought up this issue during my performance review because I wanted to ensure that keeping an irregular schedule was not a problem for Mr. Keyes or for the company. Mr. Keyes told me that my irregular hours were "absolutely fine," because I always got my work done and made sure not to miss any meetings.

D. IXL Improperly Disclosed Employees' Private Medical Information.

45. I was very concerned that IXL Human Resources did not respect the privacy of employees' medical information throughout my time with the company.

46. In or around January 2014, Ms. Penner informed me that her subordinate—whom she identified by name—had lupus, and that this employee was on leave for 6 weeks to have kidney

surgery related to her lupus. Ms. Penner told me that this employee was also having liposuction. I told Ms. Penner that she should not have told me about this employee's medical condition. Ms. Penner replied that it was "fine" to tell me because the employee was engaged in lupus-related advocacy.

47. Following this encounter, I became concerned that IXL's Human Resources Department would not respect my own personal and medical privacy before, during, and after my gender confirmation surgery. Indeed, Ms. Penner and Ms. Prado asked me invasive questions in front of other employees during the lead-in to my surgery. As the Human Resources representative, Ms. Prado had full access to the medical records that I submitted to the company in connection with my CFRA/FMLA leave of absence.

E. IXL Discriminated Against Me On The Basis Of My Gender And Disability.

48. I received no training from IXL's Human Resources Department regarding the company's disability policies and procedures. During my orientation on or around July 10, 2013, Ms. Prado came to the "Disability" section of the training and purposefully skipped over it, stating to me and my colleagues at the training session that we were a "bunch of young, healthy guys and didn't need it."

49. I knew that I would need to know the company's disability policies in the future because I planned to have surgery related to my status as a transgender person, but I did not say anything because I felt uncomfortable asking for this information in front of a room of new colleagues.

50. When I first joined IXL, I spoke with another IXL employee, Nemo Curiel, regarding the company's sick leave policy. Mr. Curiel was once called into Human Resources for taking "too many" sick days, though the company's sick leave policy technically provides for

unlimited sick time with the approval of a manager. Mr. Curiel is Mexican-American; he remarked that he was one of only two Latino employees at IXL, and that IXL's workforce is almost entirely White or Asian American. We agreed that the culture at IXL is generally unwelcoming to employees who are not White or Asian American, who are not able-bodied, and who do not fit into neat categories of gender identity, orientation, and expression.

51. In February 2014, I had a preliminary surgical procedure in preparation for my later phalloplasty. IXL allowed me to take one week of sick leave for this procedure.

52. In July 2014, I informed my supervisor, Mr. Keyes, that I needed to have another surgery, which was scheduled to take place on November 3, 2014. I also told Mr. Keyes that I would need to be out for between six and eight weeks to recover after the surgery. Finally, I told Mr. Keyes that I would need to have weekly pre-operative appointments to prepare for my surgery.

53. I did not tell Mr. Keyes the type of surgery that I prepared to undergo, nor did I inform him that I am transgender. Mr. Keyes told me that I could work remotely on the days that I had pre-operative medical appointments.

54. After speaking with Mr. Keyes in July 2014, I spoke with IXL's then-Human Resources manager, Brad Marshall, about my upcoming surgery. I asked Mr. Marshall about my options for disability leave and pay. Mr. Marshall informed me that I could take three months of medical leave under the California Medical Rights Act. Mr. Marshall also told me that I could only be paid for six weeks of disability—which I later found out was incorrect, as I was in fact eligible to receive up to 52 weeks of paid disability.

55. Mr. Marshall also told me that I would have to cash out all of my vacation days before I could begin to take disability leave, and that I could not take paid sick days for the week between my last day of work and the beginning of my State Disability Insurance ("SDI") pay.

56. IXL terminated Mr. Marshall in September 2014, one day before he and I were scheduled to discuss my upcoming surgery. The company promoted Ms. Prado to take over Human Resources. Ms. Prado is a close friend of Ms. Penner.

57. I was concerned that Ms. Prado would not respect my medical privacy. In my experience, both Ms. Prado and Ms. Penner inappropriately disclosed employees' personnel issues to members of IXL whom they regarded as friends. On or around June 2014, my colleague and friend Mr. Curiel decided to leave the company. Mr. Curiel put his two week notice in to Ms. Prado, and specifically asked Ms. Prado not to disclose that he was leaving the company to other employees. Later that same day, I received an instant message from Ms. Penner asking what I knew about Mr. Curiel's decision to leave the company. I had not heard that Mr. Curiel was leaving the company before that time.

58. At the time that I needed to disclose my upcoming gender confirmation surgery to IXL, I was concerned that Ms. Prado would not respect my medical privacy due to her reputation within the company and lack of discretion regarding Mr. Curiel. Before meeting with Ms. Prado, I spoke with Mr. Keyes about my concerns. I told Mr. Keyes that I was concerned with keeping my upcoming medical leave private, and that I wanted to ensure that Ms. Prado did not disclose my medical information to other employees. Mr. Keyes told me that I should make clear to Ms. Prado that I wanted my medical information to remain strictly confidential during our meeting. I emailed Ms. Prado that same day stating that my medical information should remain private.

59. During a meeting with Ms. Prado, Mr. Keyes, and myself several days after the company terminated Mr. Marshall, I entered the room wearing a protective sleeve over my right arm, which would be used as graft tissue during my upcoming surgery. Ms. Prado asked me, in

front of my supervisor, "What's that on your arm? What happened?" I told Ms. Prado that I would address this during our meeting.

60. During the September 2014 meeting, I told Ms. Prado that I would need hand therapy after my operation. She replied by asking me why the surgeon needed to use my right arm, and whether they could use my left arm instead.

61. At this same meeting, Ms. Prado told me that I would need to cash out my vacation days before I could take leave time, and stated that I was not allowed to use sick leave during the absence from work due to my surgery.

62. During the September 2014 meeting, Mr. Keyes told me that he would be flexible when I returned from surgery, and stated that if I needed to work remotely or part-time, that he would work with me to accommodate my needs.

63. Several days after the September 2014 meeting, Ms. Penner asked me what the "thing" on my arm was. She continued asking invasive questions when I attempted to avoid giving specific answers as to the nature of my surgery. Ms. Prado witnessed this conversation and did not intervene.

64. After I returned to my desk following this conversation, Ms. Prado sent me a Gchat message apologizing for Ms. Penner's behavior. Ms. Prado told me that Ms. Penner did not know about my upcoming surgery. I did not respond to Ms. Prado's messages.

65. My last day at work before my surgery was October 30, 2014.

F. IXL Refused To Reasonably Accommodate My Disability.

66. On Friday, December 19, I emailed Mr. Keyes to update him as to my recovery. I told Mr. Keyes that I had suffered a surgical complication that made it challenging for me to be out of the house for extended periods of time. I told Mr. Keyes that I still planned to return to

work on December 30, but asked Mr. Keyes whether I would be able to work half days in the office and half days at home as an accommodation for this surgical complication.

67. Mr. Keyes replied to my email requesting a modified schedule on Monday, December 22. Mr. Keyes stated that “I would prefer that you be in the office for your hours when you come back since you are more productive here.” Mr. Keyes asked whether there was anything that the company could do to “accommodate your situation so that you can work in the office.”

68. Being physically present in the office did not affect my ability to perform the essential functions of my job in any manner. As a Product Analyst, I could perform all of the functions of my job anywhere that I could log into the IXL system—essentially, any location with a secure internet connection. IXL routinely allowed other employees to work remotely even full time in order to accommodate personal and family obligations. My supervisor, Mr. Keyes, informed me that the company had hired at least one employee with the understanding that this employee would work remotely 100% of the time.

69. I replied to Mr. Keyes on December 30, 2014, and copied Ms. Prado. In this email, I stated that remote work qualifies as a “reasonable accommodation,” and noted that the company routinely granted this accommodation to IXL employees taking care of children, out of the office for illnesses, or even to extend vacations. I offered to provide written documentation from my physician regarding my disability, and noted that my physician had suggested that I work remotely as much as possible, especially after the complication. I also stated that I would be happy to work with Mr. Keyes to resolve any concerns he may have had regarding my productivity, including developing “metrics that we can put in place so that you can monitor my progress to your satisfaction” or a “weekly productivity review.” I have attached the email exchange from Mr. Keyes between December 19 and December 30, 2014, as Exhibit A to this Charge.

70. My request to work in the office for half days and work from home during the other half was a reasonable accommodation for my disability and would not have burdened the company in any way. In addition, Mr. Keyes refused to engage in an interactive process with me—or indeed any discussion—regarding how IXL could accommodate my disability in a manner that would not create an undue hardship on the organization. I submitted a note from my physician to IXL on December 29, 2014, explaining that my requested accommodation for a modified work-from-home schedule was medically necessary. That note is attached as Exhibit B to this Charge.

71. During my email and in-person discussions with Mr. Keyes between December 22 and December 30, 2014, I discussed the difficulties that I was having in securing reasonable accommodations with a colleague and personal friend to whom I had disclosed my transgender status. This employee was concerned by the company's unwillingness to offer me a modified work schedule after I suffered complications from surgery for personal reasons.

72. This employee and I discussed how IXL's policy of allowing "unlimited" sick leave at the discretion of the employee's manager actually meant that employees took far fewer sick days than they would under policies that provide for a set number of sick days. We discussed this policy in the context of a study indicating that "unlimited" sick policies negatively affected employees' willingness to take sick days in part because they feared retaliation, and noted that we believed that this was occurring at IXL.

73. This employee asked that I not name her in this Charge, because she is concerned that IXL may retaliate against her for any participation in this proceeding.

74. I returned to IXL on December 30, 2014. I met with Mr. Keyes that day. During that meeting, Mr. Keyes told me that another employee's wife had received concerning medical test results, and that as a result that other employee would be working 100% remotely to care for

her. Mr. Keyes also told me of another IXL employee who was on a 50% remote-work schedule because her husband lived in the District of Columbia.

75. After discussing the accommodations granted to these other IXL employees—both of whom were non-disabled, cisgender, and heterosexual—Mr. Keyes reviewed my own very strict accommodations, which required that I be in the office at fixed hours every day and report to him twice per week via email, and another two times per week in person. My schedule upon returning from medical leave was very strict by the standards of other employees at IXL, nearly all of whom work flexible hours and from home, with few checkups or restrictions. My “Scott Duane Working Remotely Plan” is attached as Exhibit C to this Charge.

G. IXL Terminated My Employment After I Complained That The Company Unlawfully Discriminated Against Me And Other Non-Conforming Employees.

76. After my disappointing meeting with Mr. Keyes on December 30, I posted an anonymous review of the company on Glassdoor.com, stating in relevant part that:

There are no politics if you fit in. If you don't—that is, if you're not a family-oriented white or Asian straight or mainstream gay person with 1.7 kids who really likes softball—then you're likely to find yourself on the outside. Treatment in the workplace, in terms of who gets flexible hours, interesting projects, praise, promotions, and a big yearly raise, is different and seems to run right along these characteristics.

There is essentially no HR knowledge or staff at this company. Know your rights when you work here, because they don't, and they don't care to learn. Most management has no idea what the word “discrimination” means, nor do they seem to think it matters.

The full text of this review is attached to this Charge as Exhibit D.

77. On January 6, 2015, Mr. Keyes asked to speak with me in his office. In this one-on-one meeting, Mr. Keyes stated that I seemed unhappy since returning from medical leave. I told Mr. Keyes that I was not feeling challenged in the work that the company had assigned to me since I returned from my medical leave, and that I was not happy with how the company had

handled my disability leave. I explained to Mr. Keyes all of the grievances discussed in this Charge, with the exception of my conversations with Ms. Penner. I did not bring up my concerns about my medical privacy that had arisen after my encounters with Ms. Penner because I was concerned that I would suffer retaliation.

78. During the January 6, 2015, meeting, I noted to Mr. Keyes that I had been working hard and meeting all of the goals outlined in our correspondence on December 30, 2014, attached to this Charge as Exhibit B. Mr. Keyes agreed that I had met all of the goals we had discussed and stated that he noticed and appreciated my work ethic and productivity.

79. After I outlined my grievances to Mr. Keyes, Mr. Keyes seemed receptive, and stated that he would escalate my concerns to Lenore Ockerberg, Ms. Prado's supervisor in the Human Resources Department. Mr. Keyes stated that he would keep me informed as to the progress of the escalation of my concerns. Mr. Keyes also apologized profusely for having discriminated against me.

80. To the best of my recollection, Mr. Keyes told me, "I'm really sorry that you felt discriminated against" and that "I didn't mean to discriminate against you." He continued that, "I can totally understand why you would feel this way," and stated that he wanted to earn my trust back and be my advocate. He stated that he was my advocate as my manager. Mr. Keyes seemed emotional and sincere, and I believe that he acted in good faith when escalating my concerns to the company's upper management. I do not believe that Mr. Keyes was or is aware that I am transgender.

81. On January 7, 2015, the day after my meeting with Mr. Keyes, I received an email from Mr. Mishkin, the CEO of IXL. Mr. Mishkin's email to me stated that he had heard that I had complaints regarding disability discrimination, and that he wanted to discuss these complaints with

me. Mr. Mishkin told me that IXL took discrimination very seriously. A copy of Mr. Mishkin's email is attached to this Charge as Exhibit E.

82. I met with Mr. Mishkin under the guise of discussing my concerns that IXL had discriminated against me on the basis of my disability on January 8, 2015. During this meeting, Mr. Mishkin and I discussed my concerns regarding disability discrimination for approximately ten minutes. I told Mr. Mishkin all of my grievances, and informed him that Mr. Keyes and Ms. Prado had acted illegally after I returned from medical leave by refusing to grant me medically necessary accommodations that they routinely granted to other, heterosexual, cisgender, and non-disabled employees for personal and professional reasons. Mr. Mishkin seemed unconcerned.

83. After a brief discussion of my disability concerns, Mr. Mishkin presented me with the December 30, 2014 review that I had posted anonymously on Glassdoor.com. Exhibit D. Mr. Mishkin said to me, "I think you know what this is."

84. I asked Mr. Mishkin why we were discussing the Glassdoor.com review, because he had asked me to meet with him to discuss my complaints of disability discrimination. Mr. Mishkin continued to press me on the Glassdoor.com review, asking whether I had written the review. I stated to Mr. Mishkin that I had written that review, and that I had written it at a time when I was angry and frustrated by the way that the company had handled my return from surgery and disability due to surgical complications.

85. Mr. Mishkin appeared angry and upset about the instances of discrimination that my Glassdoor.com review identified, and demanded evidence behind the statements that I had posted. Mr. Mishkin specifically asked me what I meant by "mainstream gay" and what exactly it was about me, personally, that I felt that IXL had discriminated against me regarding.

86. As our CEO, I believe that Mr. Mishkin had access to my medical records and the disability paperwork that I had submitted to Human Resources regarding my gender confirmation surgery.

87. I replied to Mr. Mishkin's questions by stating, roughly, "I'm queer, and I stick out." Mr. Mishkin asked me whether I felt that there was a culture of discrimination at IXL, and I replied, "Yes, I do."

88. In response, Mr. Mishkin demanded why I had not addressed the concerns regarding "micromanagement" that I raised in my Glassdoor.com review before posting my concerns to a public site. I told Mr. Mishkin that at the time that I wrote the review, I had been focused on my surgery, and had addressed these concerns with Mr. Keyes two days before during our January 6, 2015 one-on-one meeting. Mr. Mishkin stated that it "wasn't right" for me to discuss these concerns on an anonymous public forum when I had not raised them directly with my manager. In response, I offered to take the post down.

89. Mr. Mishkin stated that I had not spoken with my manager soon enough, told me that the post showed "poor judgment and ethics," and stated that he "no longer felt comfortable working with" me.

90. After I left Mr. Mishkin's office, I found that IXL employees had cleaned out my desk and that Human Resources had prepared the paperwork associated with my discharge from the company. It was apparent that Mr. Mishkin had intended to terminate me before our meeting had started, and that IXL personnel had cleaned out my desk while I was engaged in the meeting with Mr. Mishkin.

91. I believe that Mr. Mishkin never intended to engage in a constructive dialogue with me regarding the company's failure to accommodate my disability, and instead terminated my

employment on the apparent basis of a Glassdoor.com review that I had posted nearly two weeks before—two days after Mr. Keyes had elevated my disability discrimination complaints to IXL’s upper management.

Conclusion

92. I believe that IXL discriminated against me because of my sex, gender identity, gender expression, disability, request for reasonable accommodation, and decision to take protected medical leave, and retaliated against me for complaining of this discrimination.

93. As a result, I have suffered stress, anguish, humiliation, emotional distress, and loss of compensation, and I request an award of back pay, front pay in lieu of reinstatement, lost benefits, compensatory and punitive damages, liquidated damages, attorneys’ fees and costs, and an order directing IXL to cease and desist from its discriminatory and retaliatory practices and directing any other injunctive relief, together with such further and additional relief that the Department of Fair Employment and Housing (“DFEH”) or Equal Employment Opportunity Commission (“EEOC”) deems just and proper.

94. I provide the foregoing information to assert my rights under Title I of the Americans with Disabilities Act of 1990 (“ADA”), the Americans with Disabilities Act Amendments Act of 2008 (“ADAA”), Title VII of the Civil Rights Act of 1964 (“Title VII”), the Family and Medical Leave Act (“FMLA”), Section 8 of the National Labor Relations Act (“NLRA”), the California Fair Employment and Housing Act (“FEHA”), and the California Family Rights Act (“CFRA”), and to invoke the jurisdiction of the DFEH and the EEOC to investigate this Charge of Discrimination and proceed in accordance with their statutory mandates and procedural regulations, and to satisfy all procedural prerequisites to the commencement of a civil action.

95. Nothing in this Charge is intended to constitute a waiver of any right to seek judicial relief under state or local law with respect to the conduct complained of hereinafter.

96. I will advise the EEOC of any change in my address and telephone number, and I will cooperate in the proper processing of, and investigation into, this Charge. Please direct all communications and inquiries regarding this matter to David M. Marek and Cara B. Chomski, Esq., of Liddle & Robinson, L.L.P., 800 Third Avenue, New York, New York 10022, (212) 687-8500.

PRIVACY ACT STATEMENT: Under the Privacy Act of 1974, Pub. Law 93-579, authority to request personal data and its uses are:

1. **FORM NUMBER/TITLE/DATE.** EEOC Form 5, Charge of Discrimination (11/09).
2. **AUTHORITY.** 42 U.S.C. 2000e-5(b), 29 U.S.C. 211, 29 U.S.C. 626, 42 U.S.C. 12117, 42 U.S.C. 2000ff-6.
3. **PRINCIPAL PURPOSES.** The purposes of a charge, taken on this form or otherwise reduced to writing (whether later recorded on this form or not) are, as applicable under the EEOC anti-discrimination statutes (EEOC statutes), to preserve private suit rights under the EEOC statutes, to invoke the EEOC's jurisdiction and, where dual-filing or referral arrangements exist, to begin state or local proceedings.
4. **ROUTINE USES.** This form is used to provide facts that may establish the existence of matters covered by the EEOC statutes (and as applicable, other federal, state or local laws). Information given will be used by staff to guide its mediation and investigation efforts and, as applicable, to determine, conciliate and litigate claims of unlawful discrimination. This form may be presented to or disclosed to other federal, state or local agencies as appropriate or necessary in carrying out EEOC's functions. A copy of this charge will ordinarily be sent to the respondent organization against which the charge is made.
5. **WHETHER DISCLOSURE IS MANDATORY; EFFECT OF NOT GIVING INFORMATION.** Charges must be reduced to writing and should identify the charging and responding parties and the actions or policies complained of. Without a written charge, EEOC will ordinarily not act on the complaint. Charges under Title VII, the ADA or GINA must be sworn to or affirmed (either by using this form or by presenting a notarized statement or unsworn declaration under penalty of perjury); charges under the ADEA should ordinarily be signed. Charges may be clarified or amplified later by amendment. It is not mandatory that this form be used to make a charge.

NOTICE OF RIGHT TO REQUEST SUBSTANTIAL WEIGHT REVIEW

Charges filed at a state or local Fair Employment Practices Agency (FEPA) that dual-files charges with EEOC will ordinarily be handled first by the FEPA. Some charges filed at EEOC may also be first handled by a FEPA under worksharing agreements. You will be told which agency will handle your charge. When the FEPA is the first to handle the charge, it will notify you of its final resolution of the matter. Then, if you wish EEOC to give Substantial Weight Review to the FEPA's final findings, you must ask us in writing to do so within 15 days of your receipt of its findings. Otherwise, we will ordinarily adopt the FEPA's finding and close our file on the charge.

NOTICE OF NON-RETALIATION REQUIREMENTS

Please notify EEOC or the state or local agency where you filed your charge **if retaliation is taken against you or others** who oppose discrimination or cooperate in any investigation or lawsuit concerning this charge. Under Section 704(a) of Title VII, Section 4(d) of the ADEA, Section 503(a) of the ADA and Section 207(f) of GINA, it is unlawful for an *employer* to discriminate against present or former employees or job applicants, for an *employment agency* to discriminate against anyone, or for a *union* to discriminate against its members or membership applicants, because they have opposed any practice made unlawful by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the laws. The Equal Pay Act has similar provisions and Section 503(b) of the ADA prohibits coercion, intimidation, threats or interference with anyone for exercising or enjoying, or aiding or encouraging others in their exercise or enjoyment of, rights under the Act.

**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

EEOC Number: 520-2015-02025C
Case Name: Adrian S. Duane vs. IXL LEARNING, INC.
Filing Date: May 13, 2015

NOTICE TO COMPLAINANT AND RESPONDENT

This is to advise you that the above-referenced complaint is being dual filed with the California Department of Fair Employment and Housing (DFEH) by the U.S. Equal Employment Opportunity Commission (EEOC). The complaint will be filed in accordance with California Government Code section 12960. This notice constitutes service pursuant to Government Code section 12962.

The EEOC is responsible for the processing of this complaint and the DFEH will not be conducting an investigation into this matter. Please contact EEOC directly for any discussion of the complaint or the investigation.

NOTICE TO COMPLAINANT OF RIGHT-TO-SUE

This letter is also your Right to Sue notice. This Right-To-Sue Notice allows you to file a private lawsuit in State court. According to Government Code section 12965, subdivision (b), you may bring a civil action under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The lawsuit may be filed in a State of California Superior Court. Government Code section 12965, subdivision (b), provides that such a civil action must be brought within one year from the date of this notice. Pursuant to Government Code section 12965, subdivision (d)(1), this one-year period will be tolled during the pendency of the EEOC's investigation of your complaint. You should consult an attorney to determine with accuracy the date by which a civil action must be filed. This right to file a civil action may be waived in the event a settlement agreement is signed.

If you have questions about the right to file under federal law, please contact the EEOC using the contact information below.

EEOC Northern California
450 Golden Gate Ave 5-West
PO Box 36025
San Francisco, CA 94102
(415) 522-3000

EEOC Southern California
255 East Temple Ste., 4th Floor
Los Angeles, CA 90012
(213) 894-1100



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
San Francisco District Office

450 Golden Gate Avenue #5-West
PO BOX 36025
San Francisco, CA 94102
(415) 522-3000
VP (510) 735-8909
Toll Free (800) 669-4000

Respondent: IXL LEARNING, INC.
EEOC Charge No: 520-2015-02025C

Adrian S. Duane
REDACTED

Adrian S. Duane:

Now that you have filed a charge with the U.S. Equal Employment Opportunity Commission (EEOC), it is important for you to understand some of our case processing procedures.

A Copy of your charge will automatically be filed with the State of California, Department of Fair Employment and Housing. This is being done to protect your right to file a suit in state court, should you desire to do so at a later date. It is not necessary for you to contact the state agency. Because of the formal agreement between the EEOC and the state agency, the EEOC will be processing your charge. The state agency will not process it unless we request them to do so. This rarely happens, but, it does, we will certainly let you know that we are transferring your charge to the state agency for processing.

In the interest of saving both your time and the time of the state agency, please do not contact that office either to file your charge or to inquire regarding it.

A copy of your charge will be served upon the Respondent within the time limitation set forth under both federal and state laws. In this instance, your charge will be served within ten (10) days following receipt of it by this office.

Finally, we suggest that you keep this notice and a copy of your charge for your records. Be sure to advise us of any change in your address or telephone number. Failure to do so could result in dismissal of your charge. Please use your charge number on all correspondence.

If you need further assistance, please contact Darlene Turner (415) 522-3267.

Sincerely,
Eric Darius
CR/TIU Supervisor



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
New York District Office

33 Whitehall Street, 5th Floor
New York, NY 10004-2112
For General Information: (800) 669-4000
District Office: (212) 336-3620

Adrian Duane
REDACTED

Re: *EEOC Charge No. 520-2015-02025*
Duane v. IXL Learning, Inc.

Dear Mr. Duane:

I write to inform you that the above-referenced charge received in our office on March 17, 2015 has been transferred to the following EEOC office for processing:

U.S.E.E.O.C.
San Francisco District Office
Phillip Burton Federal Building
450 Golden Gate Avenue, Suite 5000
San Francisco, CA 94102
(415) 522-3000

Please address any correspondence to CRTIU Supervisor Eric Darius at the above address if you have any questions.

Sincerely,


Hernan Morales
CR/TIU Supervisor

5/6/2015

cc: Cara B Chomski, Esq.
LIDDLE & ROBINSON, LLP
800 Third Avenue
New York, NY 10022

cc: Attn:
Director of Human Resources
IXL LEARNING, INC.
777 Mariners Island Blvd., Suite 600
San Mateo, CA 94404



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
San Francisco District Office**

450 Golden Gate Avenue
5th Floor West
P.O. Box 36025
San Francisco, CA 94102-3661
San Francisco Direct Dial: (415) 522-3000
TTY (415) 522-3152
FAX (415) 522-3415

Charge Number 520-2015-02025

Adrian Scott Duane
2303 Park Blvd., Apt. 5
Oakland, CA 94606

Charging Party

IXL Learning
777 Mariners Island Blvd.
San Mateo, CA 94404

Respondent

DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the subject charge filed under Title I of the Americans with Disabilities Act of 1990, as amended (“ADA”) and Title VII of the Civil Rights Act of 1964, as amended (“Title VII”). All jurisdictional requirements have been met.

The Respondent is an employer within the meaning of ADA and Title VII and all other requirements for coverage have been met.

The Charging Party alleges that he was denied a reasonable accommodation for his disability in that Respondent would not allow him to work from home for half of his work days after he experienced complications from surgery. He also alleges that the Respondent discharged him on January 8, 2015 because he is transgender and does not conform to traditional gender stereotypes. The Charging Party also alleges that his discharge was retaliation after he engaged in protected activity.

The Respondent states that it provided the accommodation the Charging Party requested. The Respondent further states that it discharged the Charging Party after he demonstrated poor judgment by posting a public review of the Respondent on a website used to attract prospective employees.

The evidence in the record demonstrates that the Respondent did allow the Charging Party to work from home for half of his work days upon his return from leave after surgery. The evidence in the record does not demonstrate that the Respondent discharged the Charging Party because he is transgender. There is insufficient evidence that the Respondent failed to provide a reasonable accommodation or discriminated against the Charging Party because he is transgender. However, the evidence in the record reveals that the Respondent discharged the Charging Party after he engaged in protected activity.

Determination

Charge Number 520-2015-02025

Page 2

Based on the evidence of record, I have determined that there is reasonable cause to believe that the Respondent discriminated against the Charging Party in retaliation for protesting against discriminatory conduct, in violation of the statutes.

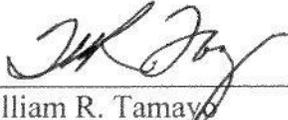
Section 706(b) of Title VII of the Civil Rights Act of 1964, as amended, as incorporated by reference in Section 107 (a) of Title I of the Americans with Disabilities Act, as amended, requires that if the Commission determines that there is reasonable cause to believe that the charge is true, it shall endeavor to eliminate the alleged unlawful employment practice by informal methods of conference, conciliation and persuasion. Having determined that there is reasonable cause to believe that the charge is true, the Commission now invites the parties to join with it in a collective effort toward a just resolution of this matter.

A representative of the Commission will contact you in the near future to begin the conciliation process. Disclosure of information obtained by the Commission during the conciliation process will be made in accordance with Section 706(b) of Title VII and Section 1601.26 of the Commission's Procedural Regulations. Where the Respondent declines to enter into settlement discussions, or when the Commission's representative for any other reason, is unable to secure a settlement acceptable to the District Director, the Director shall so inform the parties in writing and advise them of the court enforcement alternative available to the Charging Party and the Commission.

You are reminded that Federal law prohibits retaliation against persons who have exercised their right to inquire or complain about matters they believe may violate the law. Discrimination against persons who have cooperated in Commission investigations is also prohibited. These protections apply regardless of the Commission's determination on the merits of the charge.

On Behalf of the Commission,

4/22/2016
Date



William R. Tamayo
District Director

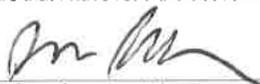
INTERNET
FORM NLRB-501
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer IXL Learning	b. Tel. No. (650) 372-4040
	c. Cell No.
	f. Fax No.
d. Address (Street, city, state, and ZIP code) 777 Mariners Island Blvd., Suite 600 San Mateo, CA 94404	e. Employer Representative
	g. e-Mail
	h. Number of workers employed 50+
i. Type of Establishment (factory, mine, wholesaler, etc.) Educational technology company	j. Identify principal product or service Educational technologies
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) I believe that IXL Learning terminated my employment in retaliation for engaging in protected concerted activity. I posted my concerns about the terms and conditions of my employment in an anonymous review to Glassdoor.com, after discussing these concerns with another IXL employee who was herself concerned about the company's discriminatory practices. IXL terminated my employment on January 8, 2015 on the basis of this review. Please see the attached Charge.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Adrian Scott Duane	
4a. Address (Street and number, city, state, and ZIP code) 2303 Park Blvd., Apt. 5 Oakland, California 94606	4b. Tel. No. (507) 581-4100
	4c. Cell No.
	4d. Fax No.
	4e. e-Mail adrian.scott.duane@gmail.com
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)	
6. DECLARATION	
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By  (signature of representative or person making charge)	Little & Robinson, L.L.P. (Print/type name and title or office, if any)
Address 800 Third Avenue, New York, NY 10022	Tel. No. (212) 687-8500
	Office, if any, Cell No.
	Fax No. (212) 687-1505
	e-Mail dmarek@liddlerobinson.com
	6/3/15 (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

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 unfair labor practice 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 voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

IXL 0001

UNFAIR LABOR PRACTICE CHARGE

A. Scott Duane v. IXL Learning

1. I am a 30-year-old transgender man. I believe that IXL Learning (“IXL”) terminated my employment in retaliation for engaging in protected concerted activity.

2. I posted my concerns about the terms and conditions of my employment in an anonymous review to Glassdoor.com, after discussing these concerns with another IXL employee who was herself concerned about the company’s discriminatory practices.

3. IXL’s CEO, Paul Mishkin, terminated my employment on January 8, 2015, on the basis of this review.

A. Background

4. I was employed by IXL from July 10, 2013 until it terminated my employment on January 8, 2015.

5. IXL is a web-based educational software company with its headquarters at 777 Mariners Island Boulevard, Suite 600, in San Mateo, California. IXL employs roughly 200 employees; although most work out of its San Mateo office, many employees work remotely from locations throughout the United States.

6. At IXL, I worked as a Product Analyst as part of the Product Development team in its San Mateo headquarters. Among other tasks, I wrote and reviewed design specifications for the IXL website and aligned IXL skills to state educational standards, including the Common Core. I also designed customized iPad and Android tablet keyboards and graphing components for our mobile apps. The IXL content team considered me the “expert” on our products for mobile platforms.

7. Throughout my employment with IXL, I was qualified for my position and performed my duties in a professional and competent manner. I earned excellent performance

reviews, received multiple awards for my work, and was considered an expert by my team for my contributions to all aspects of our mobile platforms.

B. Prior To Posting My Glassdoor.com Review, I Discussed My Concerns That IXL Engaged In Discriminatory Practices With At Least Two Other IXL Employees

8. I had gender confirmation surgery on November 3, 2014, and was out of the office on FMLA/CFRA leave between October 30, 2014, and December 30, 2014. Between December 22, 2014 and December 30, 2014, I exchanged emails with my supervisor attempting to negotiate reasonable accommodations after I became disabled due to complications from surgery. This disability in no way affected my ability to perform the essential functions of my job.

9. During my email and in-person discussions with Mr. Keyes between December 22 and December 30, 2014, I discussed the difficulties that I was having in securing reasonable accommodations with a colleague and personal friend to whom I had disclosed my transgender status. This employee was concerned by the company's unwillingness to offer me a modified work schedule after I suffered complications from surgery for personal reasons.

10. This employee and I discussed how IXL's policy of allowing "unlimited" sick leave at the discretion of the employee's manager actually meant that employees took far fewer sick days than they would under policies that provide for a set number of sick days. We discussed this policy in the context of a study indicating that "unlimited" sick policies negatively affected employees' willingness to take sick days in part because they feared retaliation, and noted that we believed that this was occurring at IXL.

10. This employee asked that I not name her in this Charge, because she is concerned that IXL may retaliate against her for any participation in this proceeding.

11. When I first joined IXL, I spoke with a second IXL employee, Nemo Curiel, regarding the company's sick leave policy. Mr. Curiel was once called into Human Resources for taking "too many" sick days, though the company's sick leave policy technically provides for unlimited sick time with the approval of a manager. Mr. Curiel is Mexican-American; he remarked that he was one of only two Latino employees at IXL, and that IXL's workforce is almost entirely White or Asian American. We agreed that the culture at IXL is generally unwelcoming to employees who are not White or Asian American, who are not able-bodied, and who do not fit into neat categories of gender identity, orientation, and expression.

C. On December 30, 2014, I Posted Concerns Regarding The Terms And Conditions Of My Employment To Glassdoor.com

12. I returned to IXL on December 30, 2014. I met with Mr. Keyes that day. During that meeting, Mr. Keyes told me that another employee's wife had received concerning medical test results, and that as a result that other employee would be working 100% remotely to care for her. Mr. Keyes also told me of another IXL employee who was on a 50% remote-work schedule because her husband lived in the District of Columbia.

13. After discussing the accommodations granted to these other IXL employees—both of whom were non-disabled, cisgender, and heterosexual—Mr. Keyes reviewed my own very strict accommodations, which required that I be in the office at fixed hours every day and report to him twice per week via email, and another two times per week in person. My schedule upon returning from medical leave was very strict by the standards of other employees at IXL, nearly all of whom work flexible hours and from home, with few checkups or restrictions.

14. After my disappointing meeting with Mr. Keyes on December 30, I posted an anonymous review of the company on Glassdoor.com, stating in relevant part that:

There are no politics if you fit in. If you don't—that is, if you're not a family-oriented white or Asian straight or mainstream gay person with 1.7 kids who really likes softball—then you're likely to find yourself on the outside. Treatment in the workplace, in terms of who gets flexible hours, interesting projects, praise, promotions, and a big yearly raise, is different and seems to run right along these characteristics.

There is essentially no HR knowledge or staff at this company. Know your rights when you work here, because they don't, and they don't care to learn. Most management has no idea what the word "discrimination" means, nor do they seem to think it matters.

The full text of this review is attached to this Charge as Exhibit A.

D. IXL Terminated My Employment In Retaliation For My Anonymous Review On Glassdoor.com

15. I met with Mr. Mishkin on January 8, 2015, under the guise of discussing my concerns that IXL had discriminated against me on the basis of my disability. During this meeting, Mr. Mishkin and I discussed my concerns regarding disability discrimination for approximately ten minutes. I told Mr. Mishkin all of my grievances, and informed him that Mr. Keyes and Ms. Prado had acted illegally after I returned from medical leave by refusing to grant me medically necessary accommodations that they routinely granted to other, heterosexual, cisgender, and non-disabled employees for personal and professional reasons. Mr. Mishkin seemed unconcerned.

16. After a brief discussion of my disability concerns, Mr. Mishkin presented me with the December 30, 2014 review that I had posted anonymously on Glassdoor.com. Exhibit A. Mr. Mishkin said to me, "I think you know what this is."

17. I asked Mr. Mishkin why we were discussing the Glassdoor.com review, because he had asked me to meet with him to discuss my complaints of disability discrimination. Mr.

Mishkin continued to press me on the Glassdoor.com review, asking whether I had written the review. I stated to Mr. Mishkin that I had written that review, and that I had written it at a time when I was angry and frustrated by the way that the company had handled my return from surgery and disability due to surgical complications.

18. Mr. Mishkin appeared angry and upset about the instances of discrimination that my Glassdoor.com review identified, and demanded evidence behind the statements that I had posted. Mr. Mishkin specifically asked me what I meant by “mainstream gay” and what exactly it was about me, personally, that I felt that IXL had discriminated against me regarding.

19. I replied to Mr. Mishkin’s questions by stating, roughly, “I’m queer, and I stick out.” Mr. Mishkin asked me whether I felt that there was a culture of discrimination at IXL, and I replied, “Yes, I do.”

20. In response, Mr. Mishkin demanded why I had not addressed the concerns regarding “micromanagement” that I raised in my Glassdoor.com review before posting my concerns to a public site. I told Mr. Mishkin that at the time that I wrote the review, I had been focused on my surgery, and had addressed these concerns with Mr. Keyes two days before during our January 6, 2015 one-on-one meeting. Mr. Mishkin stated that it “wasn’t right” for me to discuss these concerns on an anonymous public forum when I had not raised them directly with my manager. In response, I offered to take the post down.

21. Mr. Mishkin stated that I had not spoken with my manager soon enough, told me that the post showed “poor judgment and ethics,” and stated that he “no longer felt comfortable working with” me.

22. After I left Mr. Mishkin’s office, I found that IXL employees had cleaned out my desk and that Human Resources had prepared the paperwork associated with my discharge from

the company. It was apparent that Mr. Mishkin had intended to terminate me before our meeting had started, and that IXL personnel had cleaned out my desk while I was engaged in the meeting with Mr. Mishkin.

Conclusion

23. I believe that IXL terminated my employment in retaliation for engaging in protected concerted activity in violation of Section 8(a) of the National Labor Relations Act.

24. As a result, I have suffered a loss of compensation and benefits, and I request an award of back pay, front pay in lieu of reinstatement, lost benefits, attorneys' fees and costs, and an order directing IXL to cease and desist from its discriminatory and retaliatory practices and directing any other injunctive relief, together with such further and additional relief that the National Labor Relations Board "(NLRB)" deems just and proper.

25. I provide the foregoing information to assert my rights under Section 8(a) of the National Labor Relations Act, and to invoke the jurisdiction of the NLRB to investigate this Unfair Labor Practice Charge and proceed in accordance with their statutory mandates and procedural regulations.

26. Nothing in this Charge is intended to constitute a waiver of any right to seek judicial relief under state or local law with respect to the conduct complained of hereinafter.

27. I will advise the NLRB of any change in my address and telephone number, and I will cooperate in the proper processing of, and investigation into, this Charge. Please direct all communications and inquiries regarding this matter to David M. Marek and Cara B. Chomski, Esq., of Liddle & Robinson, L.L.P., 800 Third Avenue, New York, New York 10022, (212) 687-8500.

San Mateo, CA

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

IXL LEARNING, INC.

and

Case 20-CA-153625

ADRIAN SCOTT DUANE

ORDER

On April 28, 2016, Administrative Law Judge Gerald M. Etchingham of the National Labor Relations Board issued his Decision in the above-entitled proceeding and, on the same date, the proceeding was transferred to and continued before the Board in Washington, D.C. The Administrative Law Judge found that the Respondent has not engaged in certain unfair labor practices, and recommended that the complaint be dismissed.

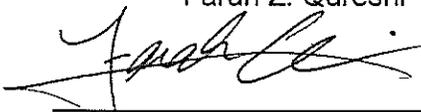
No statement of exceptions having been filed with the Board, and the time allowed for such filing having expired,

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, and Section 102.48 of the National Labor Relations Board Rules and Regulations, the Board adopts the findings and conclusions of the Administrative Law Judge as contained in his Decision, and the recommended Order of the Administrative Law Judge becomes the Order of the Board. Accordingly, the complaint is dismissed.

Dated, Washington, D.C., June 10, 2016.

By direction of the Board:

Farah Z. Qureshi



Associate Executive Secretary

IXL 0779

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES**

IXL LEARNING, INC.

And

**Case 20-CA-153625
~~20-CA-153625~~**

ADRIAN SCOTT DUANE, An Individual

**ORDER GRANTING CHARGING PARTY'S PETITION TO REVOKE SUBPOENA
B-1-ORECNV, IN PART, AND DENYING CHARGING PARTY'S PETITION TO
REVOKE, IN PART**

The hearing in this matter is currently scheduled to begin on November 5, 2015 in San Francisco, California. The Respondent IXL Learning, Inc. (Respondent) has been engaged in the creation and sale of online educational software services and related products.

The complaint alleges that the Respondent violated Section 8(a)(1) of the Act by discharging the Charging Party Adrian Scott Duane (Charging Party) on or about January 8, 2015, because Charging Party engaged in concerted activities for the purpose of mutual aid and protection, by citing concerns of workplace discrimination in a posting on Glassdoor.com, a job website that allows employees to post reviews of their employer and make suggestions for improvement, and to discourage employees from engaging in these and other concerted activities.

On November 2, 2015, the Charging Party petitions to revoke the subpoena *duces tecum* B-1-ORECNV dated October 19, 2015 (the subpoena) that the Respondent served just 7 days before hearing on October 28, 2015 (the petition). On November 3, 2015, I issued an Order to Show Cause as to why the petition should not be granted giving the parties until 5:00 p.m. today to file and serve a response as to why the petition should not be granted. Respondent's response, among other things, states that "[Respondent] IXL unilaterally agreed (before the pending petition to revoke was filed) to withdraw request nos. 9-11 and 15 of the Subpoena. All that remains at issue are request nos. 1-8, 12-14, and 16-18."

After reviewing the petition and response, the petition is granted in part and denied in part for the requests that remain as set forth below.¹

Request No. 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.

Ruling: Revoked in part as the request is overbroad and irrelevant as to time and scope. The Supreme Court stated in *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 509 (1943), that information requested in a subpoena duces tecum is relevant and must be produced so long as it is “not plainly incompetent or irrelevant to any lawful purpose.” Section 102.31(b) of the Board’s Rules and Regulations provides that an administrative law judge shall revoke a subpoena if “the evidence whose production is required does not relate to any matter under investigation or in question in the proceeding, or if . . . such subpoena does not describe with sufficient particularity the evidence whose production is required.” *See also, NLRB v. G.H.R. Energy Corp.*, 707 F.2d 110, 113 (5th Cir. 1982); *NLRB v. Williams*, 396 F.2d 247, 249 (7th Cir. 1968); *General Engineering, Inc. v. NLRB*, 341 F.2d 367, 372 (9th Cir. 1985). Request is limited to documents the Charging Party contends support the complaint allegations.

Request No. 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.

Ruling: Revoked in part for the same reasons as in Ruling for Request No. 1 above.

Request No. 3:

Documents concerning any communications between Charging Party and Glassdoor.

Ruling: Revoked in part as the request is overbroad and irrelevant as to time and scope. The Charging Party’s petition to revoke also states that he has no non-privileged responsive documents, other than the actual postings which shall be produced. Therefore, it is unnecessary to address whether such additional postings must be produced.

Request No. 4:

¹ Unless otherwise stated, all rulings herein requiring the production of subpoenaed documents are without prejudice to the right of the subpoenaed party to assert that a particular responsive document or portion thereof is privileged or protected from disclosure under federal court and/or Board rules or precedent. In that event, however, the party must provide sufficient information to evaluate the asserted privilege, including a privilege log and supporting affidavits if necessary. *See, e.g., In re Grand Jury Subpoena*, 274 F.3d 563, 576 (1st Cir. 2001); *Holifield v. U.S.*, 901 F.2d 201, 204 (7th Cir. 1990); and *Friends of Hope Valley v. Frederick Co.*, 268 F.R.D. 643, 651-652 (E.D. Cal. 2010). If the party fails to demonstrate sufficient grounds for protection, the privilege may be found to have been waived. *In re Grand Jury Subpoena*, above.

Documents concerning Charging Party's communications, if any, with employees regarding terms and conditions of employment at IXL Learning.

Ruling: Revoked in part. The requested documents are not reasonably relevant. See *Hispanics United of Buffalo*, 359 NLRB No. 37 (2012)(respondent's subpoena seeking various information from the alleged discriminatees, including communications among themselves, was properly revoked by the judge as an unwarranted "fishing expedition" as the respondent failed to show that such information was relevant to any issue in dispute). See also *Parts Depot, Inc.*, 348 NLRB 152 fn. 6 (2006)(same). Request shall not be revoked, however, and is limited to written communications between the Charging Party and any manager or supervisor or agent of Respondent about the identified subjects.

Request No. 5:

Documents concerning Charging Party's communications, if any, with IXL Learning regarding terms and conditions of employment at IXL Learning.

Ruling: Revoked in part for the same reasons as in Ruling for Request No. 1 above. Request is limited to documents the Charging Party contends support the complaint allegations.

Request No. 6:

Documents concerning Charging Party's termination by IXL Learning.

Ruling: Revoked in part for the same reasons as in Ruling for Request No. 1 above. Request is limited to documents the Charging Party contends support the complaint allegations.

Request No. 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.

Ruling: Revoked in part for the same reasons as in Ruling for Request No. 1 above. Revoked in part. Request is limited to documents the Charging Party contends support the complaint allegations.

Request No. 8:

Documents concerning any alleged discriminatory or retaliatory conduct by IXL Learning.

Ruling: Revoked in part. Request is limited to documents the Charging Party contends support the complaint allegations.

Request No. 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. ***Request later withdrawn by Respondent. No ruling needed.***

Request No. 10:

Documents concerning any employment of CP from January 8, 2015 to the present. ***Request later withdrawn by Respondent. No ruling needed.***

Request No. 11:

Documents concerning any income earned by CP from January 8, 2015 to the present. ***Request later withdrawn by Respondent. No ruling needed.***

Request No. 12:

Documents, including but not limited to electronic messages, text messages, and chat messages, between you and IXL Learning.

Ruling: Revoked in part. Request is limited to documents the Charging Party contends support the complaint allegations.

Request No. 13:

Documents concerning IXL Learning business information obtained by you during your employment with IXL Learning.

Ruling: Revoked in part. Request is limited to documents the Charging Party contends support the complaint allegations.

Request No. 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 TXL Learning.

Ruling: Revoked in part as the request is overbroad and irrelevant as to time and scope. The Charging Party's petition to revoke states that he has no non-privileged responsive documents. Therefore, it is unnecessary to address whether such requested documents must be produced.

Request No. 15:

Documents concerning any unemployment claims made by you relating to your termination from IXL Learning. ***Request later withdrawn by Respondent. No ruling needed.***

Request No. 16:

Documents provided by you to either the Equal Employment Opportunity Commission or the National Labor Relations Board.

Ruling: Revoked in part. The requested documents provided by you to the EEOC are not reasonably relevant. See *Hispanics United of Buffalo*, 359 NLRB No. 37 (2012)(respondent's subpoena seeking various information from the alleged discriminatees, including communications among themselves, applications for and receipt unemployment benefits, and any complaints to State or Federal agencies, was properly revoked by the judge as an unwarranted "fishing expedition" as the respondent failed to show that such information was relevant to any

issue in dispute). See also *Parts Depot, Inc.*, 348 NLRB 152 fn. 6 (2006)(same). As to the requested document provided by the Charging Party to the NLRB, the Charging Party agrees to provide the Respondent with substantive documents that he provided to the NLRB.

Request No. 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.

Ruling: Same as ruling to Response No. 16 above.

Request No. 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.

Ruling: Revoked. The requested documents provided by you to the EEOC are not reasonably relevant. See *Hispanics United of Buffalo*, 359 NLRB No. 37 (2012)(respondent's subpoena seeking various information from the alleged discriminatees, including communications among themselves, applications for and receipt unemployment benefits, and any complaints to State or Federal agencies, was properly revoked by the judge as an unwarranted "fishing expedition" as the respondent failed to show that such information was relevant to any issue in dispute). See also *Parts Depot, Inc.*, 348 NLRB 152 fn. 6 (2006)(same).

For the reasons stated above, **IT IS ORDERED** that the Charging Party's petition to revoke Subpoena B-1-ORECNV is **Granted**, in part, and **Denied**, in part.

Dated: November 4, 2015

Gerald M. Etchingam,
Administrative Law Judge

Served via email and facsimile upon the following:

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

In the Matter of:

ADRIAN SCOTT DUANE,

Charging Party,

and

IXL LEARNING, INC.,

Employer.

Case No. 20-CA-153625

The above-entitled matter came on for hearing, pursuant to notice, before **GERALD ETCHINGHAM**, Administrative Law Judge, at the National Labor Relations Board, Region 20, 901 Market Street, Suite 306, San Francisco, California 94103-1779, on **Thursday, November 5, 2015, at 8:05 a.m.**

1 Q Yeah.

2 A Yes, that's the one.

3 Q Now, did you have an understanding at that time that
4 Mr. Duane had thought that your conduct was discriminatory?

5 A No.

6 Q So when he references that he spoke to a lawyer and these
7 other laws, what was your understanding of that, if it was not
8 discriminatory?

9 MR. WILSON: I object. This is -- again, this is EEOC
10 land.

11 MR. MAREK: Your Honor, it's not. The testimony came in
12 that, when he was accused of discrimination on January 6th, he
13 was shocked because he couldn't believe that, but as it turns
14 out, what we see here is that this conversation, now heard
15 testimony, actually started on the 23rd of December, even
16 linking in Mr. Mishkin as early as the 23rd of December. So I
17 do want to better understand why what happened on the 6th led
18 to what we see, because it does not seem that that was the
19 first time it came up.

20 MR. WILSON: Your Honor, the Charging Party has a pending
21 EEOC charge alleging that he was fired for opposition activity
22 for opposing discrimination. This is the Charging Party's
23 attempt to take discovery on that subject.

24 The question here is whether or not, as I have been met
25 many times with objections, about whether or not they had

1 knowledge of protected concerted activity and whether the
2 discussions that they had put them on notice of group
3 complaints, whether the Glassdoor postings are concerted in
4 nature.

5 This is all about how the two managers addressed a
6 discrimination claim and whether or not they came up with a
7 response for -- in response to the accommodation request. That
8 is exactly what they're alleging in the EEOC charge and it's --
9 you know, it's sauce for the goose, sauce for the gander. If
10 I'm not allowed to go into areas that relate to EEOC subject
11 areas, then neither should the Charging Party in this case.

12 MR. MAREK: Your Honor, firstly, as the record reflects, I
13 tried to shut down Mr. Keyes' testimony before we got into any
14 of this. I made this exact objection, that I didn't think it
15 was relevant, and that objection was argued by Mr. Wilson and,
16 ultimately, overruled, so I don't -- what I'm doing now is
17 exactly what cross is for, I'm simply following up on what the
18 timeline that was established through the questions on direct.

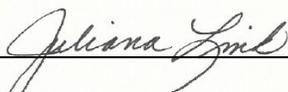
19 As I said, I'm going to move quickly, I don't have a lot
20 of questions, but I'm certainly not doing anything that's
21 inappropriate and it's direct -- this exact -- this document
22 was used on direct. If it wasn't relevant, then we shouldn't
23 have had it on direct.

24 And again, like I said, I do think that there's something
25 that seems to have been missing from the direct, because that

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C E R T I F I C A T I O N

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 20, Case Number 20-CA-153625, Adrian Scott Duane and IXL Learning, Inc., at the National Labor Relations Board, Region 20, 901 Market Street, Suite 306, San Francisco, California 94103-1779, on Thursday, November 5, 2015, at 8:05 a.m. according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.



JULIE LINK
Official Reporter

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11 Attorneys for Defendant

12 IXL Learning, Inc.

13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 U.S. EQUAL EMPLOYMENT OPPORTUNITY :
16 COMMISSION, :

17 Plaintiff, :

18 and :

19 ADRIAN SCOTT DUANE, :

20 Plaintiff-Intervenor, :

21 v. :

22 IXL LEARNING, INC., :

23 Defendant. :
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25
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27
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Case No.: 3:17-cv-02979-VC

**DEFENDANT'S ANSWERS TO PLAINTIFF'S
FIRST SET OF INTERROGATORIES**

1 Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Defendant IXL Learning, Inc.
2 (“Defendant” or “IXL”), by and through its undersigned counsel, hereby answers Plaintiff U.S. Equal
3 Employment Opportunity Commission’s (“EEOC”) First Set of Requests for Interrogatories to Defendant
4 (“Interrogatory” or “Interrogatories”) as follows:

5 **GENERAL OBJECTIONS**

6 1. Defendant objects to the Interrogatories to the extent they are not permitted under the
7 Federal Rules of Civil Procedure. Without waiving this objection, Defendant agrees to respond to these
8 questions pursuant to Rule 33 in order to facilitate discovery in this civil action.

9 2. Defendant objects to the extent that the Interrogatories seek information immune from
10 disclosure under the attorney-client and/or work product privileges, or any other applicable privilege or
11 doctrine.

12 3. Defendant further objects to the Interrogatories to the extent that they are premature,
13 overly broad, unduly burdensome, would require undue expense to answer, or are beyond the scope of
14 permissible discovery.

15 4. Defendant’s responses to the Interrogatories are without a waiver of, and with the
16 expressed reservation of:

- 17 a. All objections as to competency, relevancy, materiality, and admissibility of any
18 and all information contained in said responses; and
19 b. The right to object to the use of such information on any ground in any further
20 proceeding in this action (including trial of this action) or any other action.

21 5. Defendant further objects to the Interrogatories to the extent they are vague, ambiguous,
22 and/or indefinite.

23 6. Defendant further objects to the Interrogatories to the extent that any interrogatory, or any
24 definition or other introductory material associated with such interrogatory, purports to impose a greater
25 duty of supplementation than that required by law.

26 7. Defendant further objects to the Interrogatories to the extent they seek confidential or trade
27 secret information without the entry of a protective order governing disclosure of same.

1 8. Defendant specifically objects to Plaintiff's definition of "Defendant or IXL" and
2 expressly responds to the Interrogatories subject to said objection. The definition of "Defendant or IXL"
3 includes "all others acting or purporting to act on its behalf," without regard to Defendant's knowledge
4 of said third party actions. Defendant cannot respond to such Interrogatories without objection because
5 the definition incorrectly assumes that Defendant has knowledge of and/or control over this third-party
6 activity or information.

7 9. Defendant specifically objects to Plaintiff's definition of "concerning, related to, and refer
8 to" as the purported definition of these terms fails to provide a clear explanation of their meaning, and
9 Defendant will not speculate at its peril. Defendant further objects to these purported definitions to the
10 extent they may be construed to embrace a virtually unlimited universe of documents, thus rendering any
11 Interrogatory utilizing these terms to be unduly broad and overly burdensome.

12 10. Defendant objects to Plaintiff's definitions of "Communication" to the extent that the
13 definition purports to impose obligations greater than those set forth in the Federal Rules of Civil
14 Procedure or that the definition call for documents, electronically stored information, and
15 communications protected from disclosure by the attorney-client privilege, attorney work product
16 privilege, or any other applicable privilege or doctrine. Defendant further objects to Plaintiff's definition
17 of "communication" as the purported definition of this term, such as "other electronically stored
18 information," fails to provide a clear explanation of its meaning, and Defendant will not speculate at its
19 peril. Defendant objects to Plaintiff's definition of "communication" as being overly broad and unduly
20 burdensome and that this definition is not proportional to the needs of the case, considering the
21 importance of the issues at stake in the action, the amount in controversy, the parties' relative access to
22 relevant information, the parties' resources, the importance of the discovery in resolving the issues, and
23 that the burden and expense of the proposed discovery outweighs its likely benefit.

24 11. Defendant objects to the extent that the number of interrogatories, including discrete
25 subparts, exceeds the number permitted by Fed. R. Civ. P. 33.

INTERROGATORIES

INTERROGATORY NO. 1: Identify all of Duane’s supervisors during his tenure at IXL, including the dates that the individual supervised Duane.

ANSWER: Kate Mattison was Duane’s direct Supervisor from July 10, 2013 to January 2014. David Keyes was Duane’s direct Supervisor from January 2014 to January 8, 2015.

INTERROGATORY NO. 2: Identify all persons involved in Defendant’s decision to fire Duane and describe the nature of each person’s involvement in Defendant’s decision.

ANSWER: Defendant’s CEO Paul Mishkin made the decision to terminate Duane’s employment.

INTERROGATORY NO. 3: Identify all persons the Defendant believes to have knowledge of the facts concerning the claims raised in the EEOC’s Complaint and defenses raised in Defendant’s Answer, including a brief description of that knowledge.

ANSWER: Defendant objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, and any other applicable privilege or doctrine.

Defendant refers Plaintiff to the twenty-one (21) individuals disclosed in Section I of its Initial Disclosures, which are incorporated herein by reference. Discovery is ongoing, and Defendant will supplement this Interrogatory as information becomes available.

INTERROGATORY NO. 4: Describe in detail all equal employment opportunity training supervisors and managers received during the relevant period. For each training, specify:

- a) The date of the training;
- b) Who provided the training;
- c) Where the training took place;
- d) The length of the training;
- e) The subject matter(s) of the training;
- f) The names of Defendant employees that attended the training.

ANSWER: During the Relevant Period, managers underwent harassment training. This online harassment training was provided by ThinkHR whenever managers were assigned direct reports. Managers would then undergo the training again every two years. This Unlawful Harassment and

1 Discrimination Prevention Training lasted approximately two hours. David Keyes and Kate Mattison
2 underwent this training. Please see documents produced herewith at IXL-0847 and IXL-0851 to IXL-
3 1151. Discovery is ongoing, and Defendant will supplement this Interrogatory as information becomes
4 available.

5 **INTERROGATORY NO. 5:** Describe in detail all training provided to Defendant's non-
6 management employees concerning equal employment opportunity. This should include any training
7 concerning the prevention of employment discrimination/harassment, and/or retaliation, and complaint
8 procedures.

9 For each training, specify:

- 10 a) The date of the training;
- 11 b) Who provided the training;
- 12 c) Where the training took place;
- 13 d) The length of the training;
- 14 e) The subject matter(s) of the training;
- 15 f) The names of Defendant employees that attended the training; and
- 16 g) Whether attendance was mandatory.

17 **ANSWER:** Defendant objects to this Interrogatory as being overly broad, unduly burdensome, and
18 seeking irrelevant information. This Interrogatory is not sufficiently confined by any temporal limitations
19 and thus seeks information that has no relevance to the controversies at issue in this case. Defendant
20 objects to this Interrogatory on the basis that the Interrogatory is vague and ambiguous as to the breadth
21 or meaning of the phrase "training . . . concerning equal employment opportunity."

22 Defendant provided in-person training relating to equal employment opportunity to non-
23 management employees during the Relevant Period. This training occurred at new employee orientations
24 and/or during the week in which a newly hired employee started employment with IXL. Defendant's
25 human resources provided the training, which would take place at a conference room within IXL. The
26 length of the training was approximately an hour. All full-time IXL employees attended this training. The
27 subject matters of the training included: Introductions, New Employee Orientation Process, Company
28 Overview, Policies and Procedures, Health Benefits, ADP Self-Service Portal, and Additional

1 Benefits/Perks. Policies and Procedures included information about IXL's code of conduct, equal
2 employment opportunity, and sexual harassment. IXL's Employee Handbook also provided information
3 and instructions regarding equal employment opportunity and diversity, harassment and internal
4 complaint reporting, and disabilities/reasonable accommodation request. Please see documents
5 previously produced in the NLRB proceeding and reproduced herewith as NLRB-IXL000243 to NLRB-
6 IXL000313. The confidentiality designations in these documents are to apply in this case and pursuant
7 to the entry of and in accordance with a protective order. During 2012, IXL's human resources manager
8 underwent a non-discrimination testing on behalf of Defendant's health and/or dependent care FSA plans
9 and compliance testing in 2014 on behalf of Defendant's retirement plans. Discovery is ongoing, and
10 Defendant will supplement this Interrogatory as information becomes available.

11 **INTERROGATORY NO. 6:** In Paragraph 2 of the Affirmative Defenses section of Defendant's
12 Answer, Defendant asserts "Plaintiff is barred, in whole or in part, because all of Defendant's actions or
13 inactions concerning Duane complied with relevant and applicable laws and were based on legitimate,
14 nondiscriminatory, and non-retaliatory reasons." Explain all reason(s) supporting IXL's decision to fire
15 Duane.

16 **ANSWER:** Defendant objects to this Interrogatory to the extent it seeks information protected by the
17 attorney-client privilege, the attorney work product doctrine, and any other applicable privilege or
18 doctrine. Defendant further objects to this Interrogatory to the extent it seeks a legal conclusion.

19 Defendant terminated Duane because Duane made inaccurate and inappropriate statements about
20 IXL and IXL's CEO on Glassdoor.com, a website used by IXL to recruit new employees. Defendant
21 incorporates by reference the reasons provided to the EEOC in Defendant's Position Statement of
22 Respondent IXL Learning, Inc. dated July 10, 2015. Defendant also bases its affirmative defenses, in
23 part, on the fact that an administrative law judge ruled that Defendant fired Duane for legitimate, non-
24 discriminatory reasons. Discovery is ongoing, and Defendant will supplement this Interrogatory as
25 information becomes available.

26 **INTERROGATORY NO. 7:** In Paragraph 3 of the Affirmative Defenses section of Defendant's
27 Answer, Defendant asserts that "Plaintiff has unreasonably delayed pursuing a right or claim in a way
28 that prejudices Defendant." Describe the prejudice Defendant has suffered.

1 **ANSWER:** Defendant objects to this Interrogatory to the extent it seeks information protected by the
2 attorney-client privilege, the attorney work product doctrine, and any other applicable privilege or
3 doctrine. Defendant further objects to this Interrogatory to the extent it seeks a legal conclusion.

4 This Court is the fourth proceeding in which Defendant has been forced to defend against the
5 meritless claims surrounding Duane's termination. The National Labor Relations Board has already
6 dismissed Duane's claims, specifically finding his testimony to be non-credible. In addition, Duane
7 agreed to dismiss with prejudice the claims he asserts here as Plaintiff-Intervenor. Duane's failure to
8 assert his claims in a timely and unified manner has prejudiced Defendant in terms of the time and
9 resources required by this serial litigation and the possibility that fact witnesses may be more difficult to
10 find and/or have forgotten important factual details. Further, Duane has waited to assert his intervenor
11 claims for more than one year after the EEOC's determination and conciliation efforts. Discovery is
12 ongoing, and Defendant will supplement this Interrogatory as information becomes available.

13 **INTERROGATORY NO. 8:** In Paragraph 4 of the Affirmative Defenses section of Defendant's
14 Answer, Defendant asserts that "Plaintiff's claims are barred, in whole or in part, by Duane's failure to
15 mitigate his Damages." Identify the facts that support the contention that Duane failed to mitigate his
16 damages.

17 **ANSWER:** Defendant objects to this Interrogatory to the extent it seeks information equally
18 accessible to or in the possession of Plaintiff and/or Duane. Defendant objects to this Interrogatory to the
19 extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine,
20 and any other applicable privilege or doctrine.

21 Duane's claim to have been unable to find employment for one year or more is not credible given
22 his advanced degree and the job market in Northern California. Thus, on information and belief, Duane
23 failed to mitigate his damages by failing to make reasonable efforts to seek re-employment. Discovery is
24 just commencing in this action, and Defendant has not yet had an opportunity to develop a complete
25 factual record as the evidence concerning such a defense is in the possession of Plaintiff and/or Duane.

26 **INTERROGATORY NO. 9:** In Paragraph 5 of the Affirmative Defenses section of Defendant's
27 Answer, Defendant asserts that "Plaintiff's claim for damages or other relief are barred by the doctrines
28

1 of waiver, laches, estoppel, res judicata, issue preclusion and/or claim preclusion.” Identify the facts that
2 support IXL’s contentions that Plaintiff’s claims for damages are barred by each of these bases.

3 **ANSWER:** Defendant objects to this Interrogatory to the extent it seeks a legal conclusion. Defendant
4 objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege,
5 the attorney work product doctrine, and any other applicable privilege or doctrine.

6 Duane waited to assert his intervenor claims for more than one year after the EEOC’s
7 determination and conciliation efforts. Duane agreed to dismiss with prejudice his lawsuit against
8 Defendant as set forth more fully in Defendant’s Opposition to Proposed Plaintiff-Intervenor’s Notice of
9 Motion to Intervene (ECF No. 22), Defendant’s Response to Duane’s Letter (ECF No. 28), Defendant’s
10 Supplemental Letter Brief in Response to Proposed Plaintiff-Intervenor’s Notice of Motion to Intervene
11 (ECF No. 31), and Defendant’s Supplemental Brief to Proposed Plaintiff-Intervenor’s Notice of Motion
12 to Intervene (ECF No. 39). Discovery is ongoing, and Defendant will supplement this Interrogatory as
13 information becomes available.

14 **INTERROGATORY NO. 10:** Identify all employees responsible for monitoring Glassdoor.com
15 reviews and/or maintaining the Glassdoor.com subscription package. Describe how frequently IXL
16 monitored the posted reviews and any procedures, instructions or protocols for employees who
17 discovered a negative review about IXL.

18 **ANSWER:** Defendant objects to this Interrogatory on the basis that it is overly broad, unduly
19 burdensome, not limited in temporal scope, and seeks irrelevant information. Defendant objects to this
20 Interrogatory on the basis that it is vague and ambiguous as to the breadth of the phrase “monitoring” and
21 “maintaining,” and Defendant will not speculate at its peril. Defendant further objects on the basis that
22 this Interrogatory is not reasonably calculated to the discovery of admissible evidence.

23 Defendant further objects in that this Interrogatory is not proportional to the needs of the case,
24 considering the importance of the issues at stake in the action, the amount in controversy, the parties’
25 relative access to relevant information, the parties’ resources, the importance of the discovery in resolving
26 the issues, and that the burden and expense of the purposed discovery outweighs its likely benefit.

27 Defendant further objects in that this Interrogatory seeks confidential trade secret and proprietary
28 business information.

1 Defendant objects to this Interrogatory to the extent it seeks information protected by the attorney-
2 client privilege, the attorney work product doctrine, and any other applicable privilege or doctrine.

3 Defendant states that, while it reads Glassdoor.com postings, it does not collect, retain, or respond
4 to such postings as a policy or practice. IXL's subscription was managed by Lenore Ockerberg and/or
5 Karen Penner. Discovery is ongoing, and Defendant will supplement this Interrogatory as information
6 becomes available.

7
8 Dated: January 29, 2018

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

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12
13 -and-

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16 Attorneys for Defendant
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

U.S. EQUAL EMPLOYMENT OPPORTUNITY :
COMMISSION, :

Plaintiff, :

and :

ADRIAN SCOTT DUANE, :

Plaintiff-Intervenor, :

v. :

IXL LEARNING, INC., :

Defendant. :

**DEFENDANT’S ANSWERS TO
PLAINTIFF’S THIRD SET OF
INTERROGATORIES**

1 Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Defendant IXL Learning, Inc.
2 (“Defendant” or “IXL”), by and through its undersigned counsel, hereby answers Plaintiff U.S. Equal
3 Employment Opportunity Commission’s (“EEOC”) Third Set of Requests for Interrogatories to
4 Defendant (“Interrogatory” or “Interrogatories”) as follows:

5 **GENERAL OBJECTIONS**

6 1. Defendant objects to the Interrogatories to the extent they are not permitted under the
7 Federal Rules of Civil Procedure. Without waiving this objection, Defendant agrees to respond to these
8 questions pursuant to Rule 33 in order to facilitate discovery in this civil action.

9 2. Defendant objects to the extent that the Interrogatories seek information immune from
10 disclosure under the attorney-client and/or work product privileges, or any other applicable privilege or
11 doctrine.

12 3. Defendant further objects to the Interrogatories to the extent that they are premature,
13 overly broad, unduly burdensome, would require undue expense to answer, or are beyond the scope of
14 permissible discovery.

15 4. Defendant’s responses to the Interrogatories are without a waiver of, and with the
16 expressed reservation of:

17 a. All objections as to competency, relevancy, materiality, and admissibility of any
18 and all information contained in said responses; and

19 b. The right to object to the use of such information on any ground in any further
20 proceeding in this action (including trial of this action) or any other action.

21 5. Defendant further objects to the Interrogatories to the extent they are vague, ambiguous,
22 and/or indefinite.

23 6. Defendant further objects to the Interrogatories to the extent that any interrogatory, or any
24 definition or other introductory material associated with such interrogatory, purports to impose a greater
25 duty of supplementation than that required by law.

26 7. Defendant further objects to the Interrogatories to the extent they seek confidential or trade
27 secret information without the entry of a protective order governing disclosure of same.

1 8. Defendant specifically objects to Plaintiff's definition of "Defendant or IXL" and
2 expressly responds to the Interrogatories subject to said objection. The definition of "Defendant or IXL"
3 includes "anyone acting on its behalf," without regard to Defendant's knowledge of said third party
4 actions. Defendant cannot respond to such Interrogatories without objection because the definition
5 incorrectly assumes that Defendant has knowledge of and/or control over this third-party activity or
6 information.

7 9. Defendant specifically objects to Plaintiff's definition of "concerning, relate to, and refer
8 to" as the purported definition of these terms fails to provide a clear explanation of their meaning, and
9 Defendant will not speculate at its peril. Defendant further objects to these purported definitions to the
10 extent they may be construed to embrace a virtually unlimited universe of documents, thus rendering any
11 Interrogatory utilizing these terms to be unduly broad and overly burdensome.

12 10. Defendant objects to Plaintiff's definitions of "Communication" and "Document" to the
13 extent that the definition purports to impose obligations greater than those set forth in the Federal Rules
14 of Civil Procedure or that the definition call for documents, electronically stored information, and
15 communications protected from disclosure by the attorney-client privilege, attorney work product
16 privilege, or any other applicable privilege or doctrine. Defendant further objects to Plaintiff's definition
17 of "communication" as the purported definition of this term, such as "other electronically stored
18 information," fails to provide a clear explanation of its meaning, and Defendant will not speculate at its
19 peril. Defendant objects to Plaintiff's definition of "communication" as being overly broad and unduly
20 burdensome and that this definition is not proportional to the needs of the case, considering the
21 importance of the issues at stake in the action, the amount in controversy, the parties' relative access to
22 relevant information, the parties' resources, the importance of the discovery in resolving the issues, and
23 that the burden and expense of the proposed discovery outweighs its likely benefit.

24 11. Defendant objects to the extent that the number of interrogatories, including discrete
25 subparts, exceeds the number permitted by Fed. R. Civ. P. 33.

INTERROGATORIES

INTERROGATORY NO. 18: Identify the factual bases and any documents that form the basis for Defendant's denial that Mr. Duane suffered actual damage, including but not limited to losses in compensation and benefits, humiliation, emotional distress, and loss of enjoyment of life.

ANSWER: Defendant objects to this Interrogatory to the extent it seeks a legal conclusion and that it purports to place Plaintiff's legal burden to plead and prove its case and damages on Defendant. Defendant objects to this Interrogatory to the extent it seeks information equally accessible to or in the possession of Plaintiff and/or Duane. Defendant objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, and any other applicable privilege or doctrine.

Mr. Duane testified, in part, that he had trouble sleeping, experienced stress and anxiety in the workplace, and had difficulty maintaining relationships, and that some of these symptoms were also experienced before IXL terminated his employment. Please see the testimony given in Mr. Duane's deposition. Mr. Duane has also stonewalled Defendant's discovery efforts into medical treatment sought by Mr. Duane, which would further support Defendant's response. Mr. Duane also failed to mitigate his damages. Please see Response to Interrogatory No. 8.

INTERROGATORY NO. 19: Identify the compensation and bonuses provided to each Product Analyst or Curriculum Designer at IXL from July 2013 to January 1, 2016. Identify the reasons for each compensation decision.

ANSWER: Defendant objects to this Interrogatory as being overly broad, unduly burdensome, and seeking irrelevant information. Defendant objects on the basis that this Interrogatory is not reasonably calculated to the discovery of admissible evidence and seeks information that has no relevance to the controversies at issue in this case.

Defendant further objects that the Interrogatory is not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and that the burden and expense of the proposed discovery outweighs its likely benefit. Defendant further objects to the extent this Interrogatory seeks confidential trade secret and proprietary

1 business information. Defendant objects to this Interrogatory to the extent that this Interrogatory seeks the
2 disclosure of private information about third party individuals. Defendant is unable to disclose this private
3 information concerning third parties as it is protected from disclosure by fundamental privacy principles,
4 privileges, and laws, including, but not limited to, the First Amendment of the United States Constitution
5 and Article 1 of the California Constitution.

6 No information related to the compensation and bonuses provided to each Product Analyst or
7 Curriculum Designer will be provided.

8 **INTERROGATORY NO. 20:** Identify and describe in detail the complete benefit package
9 available to IXL Product Analysts or Curriculum Designers from July 2013 to January 2016.

10 **ANSWER:** Defendant objects to this Interrogatory as being overly broad, unduly burdensome, and
11 seeking irrelevant information. Defendant objects on the basis that this Interrogatory is not reasonably
12 calculated to the discovery of admissible evidence and seeks information that has no relevance to the
13 controversies at issue in this case.

14 Defendant further objects that the Interrogatory is not proportional to the needs of the case,
15 considering the importance of the issues at stake in the action, the amount in controversy, the parties'
16 relative access to relevant information, the parties' resources, the importance of the discovery in resolving
17 the issues, and that the burden and expense of the proposed discovery outweighs its likely benefit.
18 Defendant further objects to the extent this Interrogatory seeks confidential trade secret and proprietary
19 business information.

20 No information related to this Interrogatory will be provided.

21
22 Dated: April 9, 2018

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

23 By: /s/ Natasha R. Menezes
24 **Jeffrey D. Wilson (Pro Hac Vice)**
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25 **Natasha R. Menezes (Pro Hac Vice)**
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IXL Learning, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

and

ADRIAN SCOTT DUANE,

Plaintiff-Intervenor,

v.

IXL LEARNING, INC.,

Defendant.

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

**DEFENDANT’S RESPONSE TO PLAINTIFF
EEOC’S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

1 Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Defendant IXL Learning, Inc.
2 (“Defendant” or “IXL”), by and through its undersigned counsel, hereby responds to Plaintiff U.S. Equal
3 Employment Opportunity Commission’s (“EEOC”) First Set of Requests for Production of Documents as
4 follows:

5 **GENERAL OBJECTIONS**

6 1. Defendant objects to Plaintiff’s definition of “Defendant or IXL” and expressly responds
7 to the Requests subject to said objection. The definition of “Defendant or IXL” includes “all others acting
8 or purporting to act on its behalf,” without regard to Defendant’s knowledge of said third party actions.
9 Defendant cannot respond to such Requests without objection because the definition incorrectly assumes
10 that Defendant has knowledge of and/or control over this third-party activity or information.

11 2. Defendant objects to Plaintiff’s definitions of “DOCUMENT,” “DOCUMENTS,” “ESI,”
12 and “COMMUNICATION” to the extent that the definitions purport to impose obligations greater than
13 those set forth in the Federal Rules of Civil Procedure or that the definitions call for documents, ESI, and
14 communications protected from disclosure by the attorney-client privilege, attorney work product
15 privilege, or any other applicable privilege. Defendant further objects to Plaintiff’s definition of “ESI” as
16 being overly broad and unduly burdensome, including, but not limited to, the inclusion of “information
17 stored on ‘smart’ or other internet and text capable cellular phone or tablet devices (e.g., iPad) or other
18 portable electronic devices or portable electronic storage devices,” which could conceivably embrace a
19 virtually unlimited number of sources. Defendant objects to this definition because it is not proportional
20 to the needs of the case, considering the importance of the issues at stake in the action, the amount in
21 controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of
22 the discovery in resolving the issues, and that the burden and expense of the proposed discovery outweighs
23 its likely benefit. Defendant further objects to the requested production of ESI that exceeds the limitations
24 imposed by Fed. R. Civ. P. 26.

25 3. Defendant objects to the Requests to the extent they are not permitted under the Federal
26 Rules of Civil Procedure. Without waiving this objection, Defendant agrees to respond to these Requests
27 pursuant to Fed. R. Civ. P. 34 in order to facilitate discovery in this civil action.

28

1 4. Defendant objects to the extent that the Requests seek information immune from disclosure
2 under the attorney-client privilege, attorney work product doctrine, or any other applicable privilege or
3 doctrine.

4 5. Defendant further objects to the Requests to the extent that they are premature, overly
5 broad, unduly burdensome, would require undue expense to answer, or are beyond the scope of
6 permissible discovery.

7 6. Defendant's responses to the Requests are without a waiver of, and with the expressed
8 reservation of:

9 a. All objections as to competency, relevancy, materiality, and admissibility of any
10 and all information contained in said responses; and

11 b. The right to object to the use of such information on any ground in any further
12 proceeding in this action (including trial of this action) or any other action.

13 7. Defendant further objects to the Requests to the extent they are vague, ambiguous, and/or
14 indefinite.

15 8. Defendant further objects to the Requests to the extent they seek confidential or trade secret
16 information before the entry of a protective order governing disclosure of same.

17 9. Defendant further objects to the Requests to the extent that any such Request, or any
18 definition or other introductory material associated with such Request, purports to impose a greater duty
19 of supplementation than that required by law.

20 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

21 1. All communications concerning the factual allegations raised in the EEOC's Complaint
22 among or between:

23 a. Duane and IXL;

24 b. Duane and his manager(s), and/or supervisor(s);

25 c. Duane and any of IXL's human resources representatives; and

26 d. IXL and third parties.

27 **RESPONSE:** Defendant objects to this Request on the basis that it is overbroad and unduly burdensome
28 to the extent that it seeks communications that Defendant does not have knowledge of, especially when

1 considering that the definition of “Defendant or IXL” includes “all others acting or purporting to act on
2 its behalf” without regard to Defendant’s knowledge of “all others” or these actions. Defendant cannot
3 possibly have knowledge as to all communications that relate to the EEOC’s factual allegations.

4 Defendant further objects that the Request is not proportional to the needs of the case, considering
5 the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access
6 to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and
7 that the burden and expense of the proposed discovery outweighs its likely benefit. This Request seeks
8 any and all communications that relate to, refer to, or allude to any and all factual allegations, regardless
9 of whether Defendant was aware of or had knowledge of the communications. Plaintiff’s expansive
10 definition of “ESI” only serves to unnecessarily expand Defendant’s burden and the lack of proportionality
11 as Defendant would be required to sift through several different electronic systems for any and all
12 supervisory employees, agents, legal representatives, third parties, and any and all others acting or
13 purporting to act on its behalf, which could encompass any and all of IXL’s current and former employees
14 in order to comply with the all-encompassing definition used by Plaintiff. Producing all documents would
15 be burdensome upon Defendant as it would impose severe financial hardship and require tremendous
16 amounts of labor to procure and review all potentially responsive information. This heavy burden is
17 disproportionate to Plaintiff’s needs in this case. Any burden and expense of any Request not directed to
18 information specifically related to Plaintiff or Duane outweighs its likely benefit.

19 Defendant further objects to this Request to the extent that it calls for the production of documents
20 that are equally accessible to or in the possession of Plaintiff and/or Duane. Specifically, Defendant objects
21 on the basis that this Request is needlessly duplicative in that it seeks documents produced in previous
22 litigations and/or administrative proceedings, including the proceeding with the National Labor Relations
23 Board (NLRB).

24 Defendant objects to the extent that this Request seeks confidential trade secret and proprietary
25 business information. To the extent any of the documents Defendant agrees to produce are confidential or
26 trade secrets, these documents will be produced upon entry of and in accordance with a protective order.
27 Defendant objects to this Request to the extent it seeks the production of information protected by the
28

1 attorney-client privilege, the attorney work product doctrine, and any other applicable privilege or
2 doctrine.

3 IXL has performed a reasonable and proportional search for relevant documents and is producing
4 documents that it is aware of and that it believes are reasonably relevant to the factual allegations.
5 Discovery is ongoing, and Defendant will supplement this Request as information becomes available.
6 Defendant will withhold documents that merely reference Plaintiff and/or Duane and have no relevance
7 to the claims or defenses at issue in this matter.

8 2. Documents concerning the formation and termination of Duane’s employment relationship
9 with IXL, irrespective of the relevant time period.

10 **RESPONSE:** Defendant objects on the basis that this Request is duplicative of Request No. 1 and thus
11 refers Plaintiff to Defendant’s Response to Request No. 1.

12 Defendant objects to this Request on the basis that it is overbroad, oppressive, unduly burdensome,
13 and disproportional to the needs of the case. This Request is not sufficiently confined by any temporal
14 limitations and thus seeks information that has no relevance to the controversies at issue in this case.
15 Defendant objects on the basis that this Request is not reasonably calculated to the discovery of admissible
16 evidence.

17 Defendant objects to this Request on the basis that it is overbroad and unduly burdensome to the
18 extent that it seeks documents that Defendant does not have knowledge of, especially when considering
19 that the definition of “Defendant or IXL” includes “all others acting or purporting to act on its behalf”
20 without regard to Defendant’s knowledge of “all others” or these actions. Defendant cannot possibly have
21 knowledge as to all documents that relate to the formation and termination of Duane’s employment
22 relationship.

23 Defendant further objects that the Request is not proportional to the needs of the case, considering
24 the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access
25 to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and
26 that the burden and expense of the proposed discovery outweighs its likely benefit. This Request seeks
27 any and all documents that relate to, refer to, or allude to Duane’s formation and termination of his
28 employment relationship with Defendant, regardless of whether Defendant was aware of or had

1 knowledge of the documents. Plaintiff's expansive definition of "ESI" only serves to unnecessarily expand
2 Defendant's burden and the lack of proportionality as Defendant would be required to sift through several
3 different electronic systems for any and all supervisory employees, agents, legal representatives, third
4 parties, and any and all others acting or purporting to act on its behalf, which could encompass any and
5 all of IXL's current and former employees in order to comply with the all-encompassing definition used
6 by Plaintiff. Producing all documents would be burdensome upon Defendant as it would impose severe
7 financial hardship and require tremendous amounts of labor to procure and review all potentially
8 responsive information. This heavy burden is disproportionate to Plaintiff's needs in this case. Any burden
9 and expense of any Request not directed to information specifically related to Plaintiff or Duane outweighs
10 its likely benefit.

11 Defendant further objects to this Request to the extent that it calls for the production of documents
12 that are equally accessible to or in the possession of Plaintiff and/or Duane. Specifically, Defendant objects
13 on the basis that this Request is needlessly duplicative in that it seeks documents produced in previous
14 litigations and/or administrative proceedings, including the proceeding with the National Labor Relations
15 Board (NLRB).

16 Defendant objects to the extent that this Request seeks confidential trade secret and proprietary
17 business information. To the extent any of the documents Defendant agrees to produce are confidential or
18 trade secrets, these documents will be produced upon entry of and in accordance with a protective order.
19 Defendant objects to this Request to the extent it seeks the production of information protected by the
20 attorney-client privilege, the attorney work product doctrine, and any other applicable privilege or
21 doctrine.

22 IXL has performed a reasonable and proportional search for relevant documents and is producing
23 documents that it is aware of and that it believes are reasonably relevant to this Request. Discovery is
24 ongoing, and Defendant will supplement this Request as information becomes available. Defendant will
25 withhold documents that merely reference Plaintiff and/or Duane and have no relevance to the claims or
26 defenses at issue in this matter.

1 3. Duane’s complete personnel file, in any form, maintained by the Defendant, including files
2 concerning Duane maintained by his supervisor(s), manager(s), or IXL’s human resources
3 representative(s), irrespective of the relevant time period.

4 **RESPONSE:** Defendant objects to this Request to the extent that it calls for the production of documents
5 that are equally accessible to or in the possession of Plaintiff and/or Duane. Specifically, Defendant objects
6 on the basis that this Request is needlessly duplicative in that it seeks documents produced in previous
7 litigations and/or administrative proceedings, including the proceeding with the National Labor Relations
8 Board (NLRB). Defendant objects to the extent that this Request seeks confidential trade secret and
9 proprietary business information. To the extent any of the documents Defendant agrees to produce are
10 confidential or trade secrets, these documents will be produced upon entry of and in accordance with a
11 protective order. Defendant objects to this Request to the extent it seeks the production of information
12 protected by the attorney-client privilege, the attorney work product doctrine, and any other applicable
13 privilege or doctrine. Defendant further objects on the basis that this request is vague and ambiguous as
14 to the meaning of the term “complete personnel file, in any form.”

15 IXL has performed a reasonable and proportional search for relevant documents and is producing
16 documents that it is aware of and that it believes are reasonably relevant to this Request. Please see
17 documents previously produced in the NLRB proceeding as NLRB-IXL000001 to NLRB-IXL000799.
18 The confidentiality designations in these documents are to apply in this case and will be reproduced upon
19 the entry of and in accordance with an appropriate protective order. Specifically, see documents produced
20 in response to Documents to be Produced Nos. 1 and 5 in the NLRB’s subpoena duces tecum to IXL (IXL-
21 0840 to IXL-0844). Discovery is ongoing, and Defendant will supplement this Request as information
22 becomes available. Defendant will withhold documents that merely reference Plaintiff and/or Duane and
23 have no relevance to the claims or defenses at issue in this matter.

24 4. Duane’s performance evaluations and any formal discipline.

25 **RESPONSE:** Defendant objects on the basis that this Request is duplicative of Request No. 3 and thus
26 will not produce documents in response to this Request. Defendant refers Plaintiff to Defendant’s response
27 to Request No. 3. Defendant further objects on the basis that this Request is vague and ambiguous as to
28

1 the meaning of the terms “performance evaluations” and “formal discipline,” and Defendant will not
2 speculate at its peril.

3 5. Documents IXL relied upon to make the decision to terminate Duane’s employment.

4 **RESPONSE:** Defendant objects to this Request to the extent that it calls for the production of documents
5 that are equally accessible to or in the possession of Plaintiff and/or Duane. Specifically, Defendant objects
6 on the basis that this Request is needlessly duplicative in that it seeks documents produced in previous
7 litigations and/or administrative proceedings, including the proceeding with the National Labor Relations
8 Board (NLRB).

9 Please see the previously produced Glassdoor.com post made by Duane on or around December
10 30, 2014. No documents are being withheld.

11 6. All communications concerning Duane’s December 2014 request to work remotely among
12 or between:

- 13 a. Duane and David Keyes;
- 14 b. IXL’s manager(s), supervisor(s), including CEO Paul Mishkin; and
- 15 c. IXL’s human resources representative(s).

16 **RESPONSE:** Defendant objects to this Request on the basis that it is overbroad and unduly burdensome
17 to the extent that it seeks communications that Defendant does not have knowledge of, especially when
18 considering that the definition of “Defendant or IXL” includes “all others acting or purporting to act on
19 its behalf” without regard to Defendant’s knowledge of “all others” or these actions. Defendant cannot
20 possibly have knowledge as to all communications that relate to Duane’s December 2014 request to work
21 remotely.

22 Defendant further objects that the Request is not proportional to the needs of the case, considering
23 the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access
24 to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and
25 that the burden and expense of the proposed discovery outweighs its likely benefit. This Request seeks
26 any and all communications that relate to, refer to, or allude to Duane’s request to work remotely,
27 regardless of whether Defendant was aware of or had knowledge of the communications. Plaintiff’s
28 expansive definition of “ESI” only serves to unnecessarily expand Defendant’s burden and the lack of

1 proportionality as Defendant would be required to sift through several different electronic systems for any
2 and all managers, supervisors, and human resources representatives in order to comply with the all-
3 encompassing definition used by Plaintiff. Producing all documents would be burdensome upon
4 Defendant as it would impose severe financial hardship and require tremendous amounts of labor to
5 procure and review all potentially responsive information. This heavy burden is disproportionate to
6 Plaintiff's needs in this case. Any burden and expense of any Request not directed to information
7 specifically related to Plaintiff or Duane outweighs its likely benefit.

8 Defendant further objects to this Request to the extent that it calls for the production of documents
9 that are equally accessible to or in the possession of Plaintiff and/or Duane. Specifically, Defendant objects
10 on the basis that this Request is needlessly duplicative in that it seeks documents produced in previous
11 litigations and/or administrative proceedings, including the proceeding with the National Labor Relations
12 Board (NLRB). Defendant objects to the extent that this Request seeks confidential trade secret and
13 proprietary business information. To the extent any of the documents Defendant agrees to produce are
14 confidential or trade secrets, these documents will be produced upon entry of and in accordance with a
15 protective order. Defendant objects to this Request to the extent it seeks the production of information
16 protected by the attorney-client privilege, the attorney work product doctrine, and any other applicable
17 privilege or doctrine.

18 IXL has performed a reasonable and proportional search for relevant documents and is producing
19 documents that it is aware of and that it believes are reasonably relevant to this Request. Please also see
20 documents previously produced in the NLRB proceeding as NLRB-IXL000001 to NLRB-IXL000799.
21 Specifically, see documents produced in response to Documents to be Produced No. 9 in the NLRB's
22 subpoena duces tecum to IXL (IXL-0840 to IXL-0844). The confidentiality designations in these
23 documents are to apply in this case and will be reproduced upon the entry of and in accordance with an
24 appropriate protective order. Defendant will withhold documents that merely reference Plaintiff and/or
25 Duane and have no relevance to the claims or defenses at issue in this matter. Discovery is ongoing, and
26 Defendant will supplement this Request as information becomes available.

27 7. All communications concerning IXL's decision to terminate Duane's employment among
28 or between:

- 1 a. Duane and IXL;
- 2 b. IXL's manager(s), supervisor(s), including CEO Paul Mishkin; and
- 3 c. IXL's human resources representative(s).

4 **RESPONSE:** Defendant objects to this Request on the basis that it is overbroad and unduly burdensome
5 to the extent that it seeks communications that Defendant does not have knowledge of, especially when
6 considering that the definition of "Defendant or IXL" includes "all others acting or purporting to act on
7 its behalf" without regard to Defendant's knowledge of "all others" or these actions. Defendant cannot
8 possibly have knowledge as to all communications that relate to Duane's termination.

9 Defendant further objects that the Request is not proportional to the needs of the case, considering
10 the importance of the issues at stake in the action, the amount in controversy, the parties' relative access
11 to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and
12 that the burden and expense of the proposed discovery outweighs its likely benefit. This Request seeks
13 any and all communications that relate to, refer to, or allude to Duane's termination, regardless of whether
14 Defendant was aware of or had knowledge of the communications. Plaintiff's expansive definition of
15 "ESI" only serves to unnecessarily expand Defendant's burden and the lack of proportionality as
16 Defendant would be required to sift through several different electronic systems for any and all managers,
17 supervisors, and human resources representatives in order to comply with the all-encompassing definition
18 used by Plaintiff. Producing all documents would be burdensome upon Defendant as it would impose
19 severe financial hardship and require tremendous amounts of labor to procure and review all potentially
20 responsive information. This heavy burden is disproportionate to Plaintiff's needs in this case. Any burden
21 and expense of any Request not directed to information specifically related to Plaintiff or Duane outweighs
22 its likely benefit.

23 Defendant further objects to this Request to the extent that it calls for the production of documents
24 that are equally accessible to or in the possession of Plaintiff and/or Duane. Specifically, Defendant objects
25 on the basis that this Request is needlessly duplicative in that it seeks documents produced in previous
26 litigations and/or administrative proceedings, including the proceeding with the National Labor Relations
27 Board (NLRB). Defendant objects to the extent that this Request seeks confidential trade secret and
28 proprietary business information. To the extent any of the documents Defendant agrees to produce are

1 confidential or trade secrets, these documents will be produced upon entry of and in accordance with a
2 protective order. Defendant objects to this Request to the extent it seeks the production of information
3 protected by the attorney-client privilege, the attorney work product doctrine, and any other applicable
4 privilege or doctrine.

5 IXL has performed a reasonable and proportional search for relevant documents and is producing
6 documents that it is aware of and that it believes are reasonably relevant to this Request. Please also see
7 documents previously produced in the NLRB proceeding as NLRB-IXL000001 to NLRB-IXL000799.
8 Specifically, see documents produced in response to Documents to be Produced No. 3 in the NLRB's
9 subpoena duces tecum to IXL (IXL-0840 to IXL-0844). The confidentiality designations in these
10 documents are to apply in this case and will be reproduced upon the entry of and in accordance with an
11 appropriate protective order. Defendant will withhold documents that merely reference Plaintiff and/or
12 Duane and have no relevance to the claims or defenses at issue in this matter. Discovery is ongoing, and
13 Defendant will supplement this Request as information becomes available.

14 8. All communications concerning posts on Glassdoor.com among or between:

- 15 a. IXL's manager(s), supervisor(s), including CEO Paul Mishkin;
- 16 b. IXL's human resources representative(s);
- 17 c. IXL and non-managerial employees.

18 **RESPONSE:** Defendant objects to this Request on the basis that it is overbroad, oppressive, unduly
19 burdensome, and disproportional to the needs of the case. This Request is not sufficiently confined by any
20 temporal limitations and thus seeks information that has no relevance to the controversies at issue in this
21 case. Defendant objects on the basis that this Request is not reasonably calculated to the discovery of
22 admissible evidence.

23 Defendant objects to this Request on the basis that it is overbroad and unduly burdensome to the
24 extent that it seeks communications that Defendant does not have knowledge of, especially when
25 considering that the definition of "Defendant or IXL" includes "all others acting or purporting to act on
26 its behalf" without regard to Defendant's knowledge of "all others" or these actions. Defendant cannot
27 possibly have knowledge as to all communications that relate to Glassdoor.com.

1 Defendant further objects that the Request is not proportional to the needs of the case, considering
2 the importance of the issues at stake in the action, the amount in controversy, the parties' relative access
3 to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and
4 that the burden and expense of the proposed discovery outweighs its likely benefit. This Request seeks
5 any and all communications that relate to, refer to, or allude to posts on Glassdoor.com, regardless of
6 when such a communication was made or whether the communication has any relevance to Plaintiff's
7 claims in this case. Producing all documents would be burdensome upon Defendant as it would impose
8 severe financial hardship and require tremendous amounts of labor to procure and review all potentially
9 responsive information about a service that has been available for the past ten years. Responding to this
10 Request would also require Defendant to review any and all communications for any and all of IXL's
11 current and former employees in order to comply with this all-encompassing Request. This heavy burden
12 is disproportionate to Plaintiff's needs in this case. Any burden and expense of any Request not directed
13 to information specifically related to Plaintiff or Duane outweighs its likely benefit.

14 Defendant objects to this Request on the basis that the Request is vague and ambiguous as to the
15 breadth of the phrase "posts," and Defendant will not speculate at its peril.

16 Defendant objects to this Request to the extent that this Request seeks the disclosure of private
17 information about third party individuals. Defendant is unable to disclose this private information
18 concerning third parties as it is protected from disclosure by fundamental privacy principles, privileges,
19 and laws, including, but not limited to, the First Amendment of the United States Constitution and Article
20 1 of the California Constitution.

21 Defendant further objects to this Request to the extent that it calls for the production of documents
22 that are equally accessible to or in the possession of Plaintiff and/or Duane. Specifically, Defendant objects
23 on the basis that this Request is needlessly duplicative in that it seeks documents produced in previous
24 litigations and/or administrative proceedings, including the proceeding with the National Labor Relations
25 Board (NLRB). Defendant objects to the extent that this Request seeks confidential trade secret and
26 proprietary business information. To the extent any of the documents Defendant agrees to produce are
27 confidential or trade secrets, these documents will be produced upon entry of and in accordance with a
28 protective order. Defendant objects to this Request to the extent it seeks the production of information

1 protected by the attorney-client privilege, the attorney work product doctrine, and any other applicable
2 privilege or doctrine.

3 IXL has performed a reasonable and proportional search for relevant documents and is producing
4 documents that it is aware of and that it believes are reasonably relevant to this Request, including
5 communications concerning Duane's post on Glassdoor.com and Defendant's subscription to
6 Glassdoor.com. Please also see documents previously produced in the NLRB proceeding as NLRB-
7 IXL000001 to NLRB-IXL000799. Specifically, see documents produced in response to Documents to be
8 Produced Nos. 3, 4, 6, and 7 in the NLRB's subpoena duces tecum to IXL (IXL-0840 to IXL-0844). The
9 confidentiality designations in these documents are to apply in this case and will be reproduced upon the
10 entry of and in accordance with an appropriate protective order. Defendant will withhold documents that
11 merely reference Glassdoor and have no relevance to the claims or defenses at issue in this matter.
12 Discovery is ongoing, and Defendant will supplement this Request as information becomes available.

13 9. All communications concerning Glassdoor.com posts that criticized or otherwise
14 negatively characterized IXL during the relevant time period among or between IXL's manager(s),
15 supervisor(s), and/or human resources representative(s).

16 **RESPONSE:** Defendant objects to this Request on the basis that it is duplicative of Request No. 8 and
17 thus refers Plaintiff to Defendant's Response to Request No. 8.

18 10. Workplace policies or guidelines in effect during the relevant time period that address:

- 19 a. Discipline;
- 20 b. Termination of employment;
- 21 c. Promotion;
- 22 d. Discrimination;
- 23 e. Performance reviews or evaluations;
- 24 f. Misconduct;
- 25 g. Retaliation; and/or
- 26 h. Working remotely.

27 **RESPONSE:** Defendant objects to this Request to the extent that it calls for the production of documents
28 that are equally accessible to or in the possession of Plaintiff and/or Duane. Specifically, Defendant objects

1 on the basis that this Request is needlessly duplicative in that it seeks documents produced in previous
2 litigations and/or administrative proceedings, including the proceeding with the National Labor Relations
3 Board (NLRB). Defendant objects to the extent that this Request seeks confidential trade secret and
4 proprietary business information. To the extent any of the documents Defendant agrees to produce are
5 confidential or trade secrets, these documents will be produced upon entry of and in accordance with a
6 protective order. Defendant objects to this Request to the extent it seeks the production of information
7 protected by the attorney-client privilege, the attorney work product doctrine, and any other applicable
8 privilege or doctrine. Defendant further objects to this Request on the basis that the Request is vague and
9 ambiguous as to the breadth of the phrase “guidelines,” and Defendant will not speculate at its peril.

10 IXL has performed a reasonable and proportional search for relevant documents and is producing
11 documents that it is aware of and that it believes are reasonably relevant to this Request. Please see
12 documents previously produced in the NLRB proceeding as NLRB-IXL000001 to NLRB-IXL000799.
13 Specifically, see documents produced in response to Documents to be Produced No. 11 in the NLRB’s
14 subpoena duces tecum to IXL (IXL-0840 to IXL-0844). The confidentiality designations in these
15 documents are to apply in this case and will be reproduced upon the entry of and in accordance with an
16 appropriate protective order.

17 11. The table of contents and index of any employee handbook, code of conduct, or policies
18 and procedures manual in effect during the relevant time period.

19 **RESPONSE:** Defendant objects to this Request to the extent it seeks documents previously requested and
20 produced in response to Request No. 10. Thus, Defendant refers Plaintiff to Defendant’s Response to
21 Request No. 10.

- 22 12. Job description(s) for the following position(s):
- 23 a. Any position that Duane held;
 - 24 b. Any job within the human resources department;
 - 25 c. Any of Duane’s supervisor(s) or manager(s);
 - 26 d. Corporate Recruiter; and
 - 27 e. Operations Manager
- 28

1 **RESPONSE:** Defendant objects to this Request on the basis that it is overbroad and disproportional to
2 the needs of the case. This Request is not sufficiently confined by any temporal limitations and thus seeks
3 information that has no relevance to the controversies at issue in this case. Defendant further objects on
4 the basis that this Request seeks information that has no relevance to the controversies at issue in this case
5 and is not reasonably calculated to the discovery of admissible evidence.

6 Defendant further objects that the Request is not proportional to the needs of the case, considering
7 the importance of the issues at stake in the action, the amount in controversy, the parties' relative access
8 to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and
9 that the burden and expense of the proposed discovery outweighs its likely benefit. This Request seeks
10 job descriptions, regardless of when this job description was used, for jobs having no bearing or relevance
11 to the issues or claims in this case. Producing all documents would be burdensome upon Defendant as it
12 would impose financial hardship and require tremendous amounts of labor to procure and review all
13 potentially responsive information for a company founded twenty years ago. This heavy burden is
14 disproportionate to Plaintiff's needs in this case. Any burden and expense of any Request not directed to
15 information specifically related to Plaintiff or Duane outweighs its likely benefit.

16 Defendant objects to the extent that this Request seeks confidential trade secret and proprietary
17 business information. To the extent any of the documents Defendant agrees to produce are confidential or
18 trade secrets, these documents will be produced upon entry of and in accordance with a protective order.
19 Defendant objects to this Request to the extent it seeks the production of information protected by the
20 attorney-client privilege, the attorney work product doctrine, and any other applicable privilege or
21 doctrine.

22 Defendant has produced job descriptions for Duane's position as a math product analyst used
23 during the Relevant Period. There are no responsive documents regarding a job description of David Keyes
24 and Kate Mattison used during the Relevant Period. No other documents will be produced.

25 13. Documents showing Duane's compensation and benefits. Those normally include
26 retirement plan benefits, fringe benefits, employee benefit summary plan descriptions, and summaries of
27 compensation.

1 **RESPONSE:** Defendant objects to this Request to the extent it seeks documents previously requested
2 and produced in response to Request No. 3. Thus, Defendant refers Plaintiff to Defendant's Response to
3 Request No. 3.

4 14. Documents concerning investigation(s) of any complaint(s) about Duane or made by
5 Duane.

6 **RESPONSE:** Defendant objects to this Request to the extent it seeks documents previously requested
7 and produced in response to Request No. 3. Thus, Defendant refers Plaintiff to Defendant's Response to
8 Request No. 3.

9 15. Any other Document(s) upon which the defendant relies to support the defenses,
10 affirmative defenses, and counterclaims, including any other document(s) describing the reasons for the
11 termination of Duane's employment.

12 **RESPONSE:** Please see Response to Request No. 5. Please also see documents produced herein and
13 previously produced in the NLRB proceeding and reproduced herewith as NLRB-IXL000001 to NLRB-
14 IXL000799. The confidentiality designations in these documents are to apply in this case and pursuant to
15 the entry of and in accordance with a protective order. Discovery is ongoing, and Defendant will
16 supplement this Request as information becomes available.

17 16. Document(s) concerning any relationship between Glassdoor.com and IXL Learning, Inc.
18 Include any contractual agreements setting forth the terms of IXL's subscription for Glassdoor.com
19 services.

20 **RESPONSE:** Defendant objects to this Request on the basis that it is overbroad, oppressive, unduly
21 burdensome, and disproportional to the needs of the case. This Request is not sufficiently confined by any
22 temporal limitations and thus seeks information that has no relevance to the controversies at issue in this
23 case. Defendant objects on the basis that this Request is not reasonably calculated to the discovery of
24 admissible evidence.

25 Defendant further objects that the Request is not proportional to the needs of the case, considering
26 the importance of the issues at stake in the action, the amount in controversy, the parties' relative access
27 to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and
28 that the burden and expense of the proposed discovery outweighs its likely benefit. This Request seeks

1 any and all documents, including electronically stored information and all writings, that relate to, refer to,
2 or allude to any relationship between IXL and Glassdoor.com, regardless of when such a document was
3 made or whether the document has any relevance to Plaintiff's claim in this case. Producing all documents
4 would be burdensome upon Defendant as it would impose severe financial hardship and require
5 tremendous amounts of labor to procure and review all potentially responsive information about a service
6 that has been available for years. Depending on the breadth of the definition of "relationship," this all-
7 encompassing Request would also require Defendant to review any and all communications for any and
8 all of IXL's current and former employees. This heavy burden is disproportionate to Plaintiff's needs in
9 this case. Any burden and expense of any Request not directed to information specifically related to
10 Plaintiff or Duane outweighs its likely benefit.

11 Defendant further objects to this Request on the basis that the Request is vague and ambiguous as
12 to the breadth of the phrase "relationship," and Defendant will not speculate at its peril.

13 Defendant objects to this Request to the extent that this Request seeks the disclosure of private
14 information about third party individuals. Defendant is unable to disclose this private information
15 concerning third parties as it is protected from disclosure by fundamental privacy principles, privileges,
16 and laws, including, but not limited to, the First Amendment of the United States Constitution and Article
17 1 of the California Constitution.

18 Defendant objects to the extent that this Request seeks confidential trade secret and proprietary
19 business information. To the extent any of the documents Defendant agrees to produce are confidential or
20 trade secrets, these documents will be produced upon entry of and in accordance with a protective order.
21 Defendant objects to this Request to the extent it seeks the production of information protected by the
22 attorney-client privilege, the attorney work product doctrine, and any other applicable privilege or
23 doctrine.

24 Defendant has produced documents about IXL's subscription with Glassdoor.com during the
25 Relevant Period. Please also see documents previously produced in the NLRB proceeding as NLRB-
26 IXL000001 to NLRB-IXL000799. The confidentiality designations in these documents are to apply in
27 this case and pursuant to the entry of and will be reproduced upon the entry of and in accordance with an
28

1 appropriate protective order. Defendant will withhold documents that merely reference Glassdoor.com
2 and have no relevance to the claims or defenses at issue in this matter.

- 3 17. All communications concerning IXL’s Glassdoor.com account among or between:
- 4 a. IXL management and non-management employees;
 - 5 b. IXL manager(s), supervisor(s), marketing representative(s), and/or human resource
6 representative(s).

7 **RESPONSE:** Defendant objects to this Request on the basis that it is overbroad, oppressive, unduly
8 burdensome, and disproportional to the needs of the case. This Request is not sufficiently confined by any
9 temporal limitations and thus seeks information that has no relevance to the controversies at issue in this
10 case. Defendant objects on the basis that this Request is not reasonably calculated to the discovery of
11 admissible evidence.

12 Defendant objects to this Request on the basis that it is overbroad and unduly burdensome to the
13 extent that it seeks communications that Defendant does not have knowledge of, especially when
14 considering that this Request seeks any and all communications between IXL management and “non-
15 management employees,” which amounts to any and all IXL former and current employees. Defendant
16 cannot possibly have knowledge as to all communications that relate to Glassdoor.com.

17 Defendant further objects that the Request is not proportional to the needs of the case, considering
18 the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access
19 to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and
20 that the burden and expense of the proposed discovery outweighs its likely benefit. This Request seeks
21 any and all communications that relate to, refer to, or allude to the Glassdoor.com account, regardless of
22 when such a communication was made or whether the communication has any relevance to Plaintiff’s
23 claim in this case. Producing all documents would be burdensome upon Defendant as it would impose
24 severe financial hardship and require tremendous amounts of labor to procure and review all potentially
25 responsive information about a service that has been available for the past ten years. Responding to this
26 Request would also require Defendant to review any and all communications for any and all of IXL’s
27 current and former employees in order to comply with this all-encompassing Request. This heavy burden
28

1 is disproportionate to Plaintiff's needs in this case. Any burden and expense of any Request not directed
2 to information specifically related to Plaintiff or Duane outweighs its likely benefit.

3 Defendant objects to this Request to the extent that this Request seeks the disclosure of private
4 information about third party individuals. Defendant is unable to disclose this private information
5 concerning third parties as it is protected from disclosure by fundamental privacy principles, privileges,
6 and laws, including, but not limited to, the First Amendment of the United States Constitution and Article
7 1 of the California Constitution.

8 Defendant further objects to this Request to the extent that it calls for the production of documents
9 that are equally accessible to or in the possession of Plaintiff and/or Duane. Specifically, Defendant objects
10 on the basis that this Request is needlessly duplicative in that it seeks documents produced in previous
11 litigations and/or administrative proceedings, including the proceeding with the National Labor Relations
12 Board (NLRB). Defendant objects to the extent that this Request seeks confidential trade secret and
13 proprietary business information. To the extent any of the documents Defendant agrees to produce are
14 confidential or trade secrets, these documents will be produced upon entry of and in accordance with a
15 protective order. Defendant objects to this Request to the extent it seeks the production of information
16 protected by the attorney-client privilege, the attorney work product doctrine, and any other applicable
17 privilege or doctrine.

18 IXL has performed a reasonable and proportional search for relevant documents and is producing
19 documents that it is aware of and that it believes are reasonably relevant to this Request, including
20 documents regarding Defendant's subscription to Glassdoor.com. Please also see documents previously
21 produced in the NLRB proceeding as NLRB-IXL000001 to NLRB-IXL000799. Specifically, see
22 documents produced in response to Documents to be Produced Nos. 3, 4, 6, and 7 in the NLRB's subpoena
23 duces tecum to IXL (IXL-0840 to IXL-0844). The confidentiality designations in these documents are to
24 apply in this case and will be reproduced upon the entry of and in accordance with an appropriate
25 protective order. Defendant will withhold documents that merely reference Glassdoor and have no
26 relevance to the claims or defenses at issue in this matter. Discovery is ongoing, and Defendant will
27 supplement this Request as information becomes available.

28

1 18. All document(s) concerning rules, policies, guidelines governing how IXL monitors and
2 responds to negative reviews about IXL posted on Glassdoor.com.

3 **RESPONSE:** Please see Response to Request No. 10. Defendant further objects to this Request on the
4 basis that the Request is vague and ambiguous as to the breadth of the phrases “monitors,” “responds,”
5 and “negative,” and Defendant will not speculate at its peril. Defendant further states that, while it reads
6 Glassdoor.com postings, it does not collect, retain, or respond to such postings as a policy or practice.
7 Defendant is not aware of any responsive documents. Discovery is ongoing, and Defendant will
8 supplement this Request as information becomes available.

9 19. All documents concerning training described in your response to EEOC’s First Set of
10 Requests for Interrogatories to Defendant, Interrogatory Request No. 5.

11 **RESPONSE:** Defendant objects to this Request on the basis that it is overbroad, oppressive, unduly
12 burdensome, and disproportional to the needs of the case. This Request is not sufficiently confined by any
13 temporal limitations and thus seeks information that has no relevance to the controversies at issue in this
14 case. Defendant objects on the basis that this Request is not reasonably calculated to the discovery of
15 admissible evidence.

16 Defendant further objects that the Request is not proportional to the needs of the case, considering
17 the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access
18 to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and
19 that the burden and expense of the proposed discovery outweighs its likely benefit. This Request seeks
20 any and all trainings provided to any and all employees concerning equal employment opportunity,
21 regardless of when such a training was made or whether the training has any relevance to Plaintiff’s claim
22 in this case. The burden of responding to this Request is disproportionate to Plaintiff’s needs in this case.
23 Any burden and expense of any Request not directed to information specifically related to Plaintiff or
24 Duane outweighs its likely benefit.

25 Defendant further objects to this Request on the basis that the Request is vague and ambiguous as
26 to the breadth of the phrase “training . . . concerning equal employment opportunity,” and Defendant will
27 not speculate at its peril.

28

1 Defendant objects to this Request to the extent that this Request seeks the disclosure of private
2 information about third party individuals. Defendant is unable to disclose this private information
3 concerning third parties as it is protected from disclosure by fundamental privacy principles, privileges,
4 and laws, including, but not limited to, the First Amendment of the United States Constitution and Article
5 1 of the California Constitution.

6 Defendant further objects to this Request to the extent that it calls for the production of documents
7 that are equally accessible to or in the possession of Plaintiff and/or Duane. Specifically, Defendant objects
8 on the basis that this Request is needlessly duplicative in that it seeks documents produced in previous
9 litigations and/or administrative proceedings, including the proceeding with the National Labor Relations
10 Board (NLRB).

11 Defendant objects to the extent that this Request seeks confidential trade secret and proprietary
12 business information. To the extent any of the documents Defendant agrees to produce are confidential or
13 trade secrets, these documents will be produced upon entry of and in accordance with a protective order.
14 Defendant objects to this Request to the extent it seeks the production of information protected by the
15 attorney-client privilege, the attorney work product doctrine, and any other applicable privilege or
16 doctrine.

17 IXL has performed a reasonable and proportional search for relevant documents and is producing
18 documents that it is aware of and that it believes are reasonably relevant to this Request. Please see
19 documents previously produced. Specifically, please see documents previously produced in the NLRB
20 proceeding as NLRB-IXL000243 to NLRB-IXL000313. The confidentiality designations in these
21 documents are to apply in this case and will be reproduced upon the entry of and in accordance with an
22 appropriate protective order. Discovery is ongoing, and Defendant will supplement this Request as
23 information becomes available.

24 20. All documents concerning training described in your response to EEOC's First Set of
25 Requests for Interrogatories to Defendant, Interrogatory Request No. 4.

26 **RESPONSE:** Please see Response to Request No. 19. Specifically, please see documents produced at
27 IXL-0847 and IXL-0851 to IXL-1151.

28

1 21. Produce all documents that Defendant reviewed, referenced, identified or relied on in
2 responding to EEOC's First Set of Interrogatories to Defendant.

3 **RESPONSE:** Defendant objects to this Request on the basis that it violates the attorney-client privilege
4 the attorney work product doctrine, and any other applicable privilege or doctrine. IXL is withholding all
5 documents protected by such privileges. Please otherwise see documents that have been produced.

6 22. All documents upon which Defendant intends to rely to establish each separate affirmative
7 defense.

8 **RESPONSE:** Defendant objects to this Request on the basis that it violates the attorney-client privilege,
9 the attorney work product doctrine, and any other applicable privilege or doctrine. Defendant further
10 objects in that discovery in this matter is not yet complete. Please see the documents that have been
11 produced. Discovery is ongoing, and Defendant will supplement this Request as information becomes
12 available.

13 23. All documents concerning IXL's investigations into employee complaints of
14 discrimination during the relevant time period.

15 **RESPONSE:** Defendant objects to this Request on the basis that it is overbroad, oppressive, unduly
16 burdensome, and disproportional to the needs of the case. This Request additionally seeks information
17 related to IXL's other employees who are not at issue in this lawsuit (nor have they filed a charge of
18 discrimination with the EEOC), and thus is not reasonably calculated to the discovery of admissible
19 evidence. To the extent any employees have filed a charge of discrimination with the EEOC, Defendant
20 further objects to the extent that it calls for the production of documents that are equally accessible to or
21 in the possession of Plaintiff and/or Duane

22 Defendant further objects that the Request is not proportional to the needs of the case, considering
23 the importance of the issues at stake in the action, the amount in controversy, the parties' relative access
24 to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and
25 that the burden and expense of the proposed discovery outweighs its likely benefit. This Request seeks
26 documents concerning *any* investigation into employee complaints of discrimination, regardless of who
27 the complainant is/was, who the alleged discriminator is/was, and without regards to whether the
28

1 complainant was similarly situated to Duane. Any burden and expense of any Request not directed to
2 information specifically related to Plaintiff or Duane outweighs its likely benefit.

3 Defendant further objects to this Request on the basis that the Request is vague and ambiguous as
4 to the breadth of the phrases “investigations” and “complaints,” and Defendant will not speculate at its
5 peril.

6 Defendant objects to this Request to the extent that this Request seeks the disclosure of private
7 information about third party individuals. Defendant is unable to disclose this private information
8 concerning third parties as it is protected from disclosure by fundamental privacy principles, privileges,
9 and laws, including, but not limited to, the First Amendment of the United States Constitution and Article
10 1 of the California Constitution. Defendant objects to this Request to the extent it seeks the production of
11 information protected by the attorney-client privilege, the attorney work product doctrine, and any other
12 applicable privilege or doctrine.

13 IXL has performed a reasonable and proportional search for relevant documents and is not aware
14 of documents responsive to this Request. Discovery is ongoing, and Defendant will supplement this
15 Request as information becomes available.

16 24. All documents concerning agreements permitting employees to work remotely.

17 **RESPONSE:** Defendant objects to this Request on the basis that it is overbroad, oppressive, unduly
18 burdensome, and disproportional to the needs of the case. This Request is not sufficiently confined by any
19 temporal limitations and thus seeks information that has no relevance to the controversies at issue in this
20 case. Defendant objects on the basis that this Request is not limited to similarly situated employees and
21 thus seeks agreements about employees in any and all job categories, regardless of job responsibilities and
22 regardless of whether the working remotely arrangement was sporadic or for an extended period of time.
23 Defendant objects on the basis that this Request is not reasonably calculated to the discovery of admissible
24 evidence.

25 Defendant further objects that the Request is not proportional to the needs of the case, considering
26 the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access
27 to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and
28 that the burden and expense of the proposed discovery outweighs its likely benefit. This Request seeks all

1 documents, defined as all electronically stored information and all writings, that relate to, refer to, or allude
2 to any type of an agreement permitting any and all employees to work remotely (however that term may
3 be defined) since IXL started as a company in 1998. During the Relevant Period (as defined by Plaintiff),
4 working remotely privileges were left to the discretion of managers. Thus, producing all documents would
5 be burdensome upon Defendant as it would impose severe financial hardship, require tremendous amounts
6 of labor, and require participation from former employees and supervisors from the past twenty years in
7 order to procure all potentially responsive information. This heavy burden is disproportionate to Plaintiff's
8 needs in the case in which Plaintiff alleges retaliation based on a post made on Glassdoor.com by Duane,
9 who worked for IXL between 2013 and 2015. Any burden and expense of any Request not directed to
10 information specifically related to Plaintiff or Duane outweighs its likely benefit.

11 Defendant further objects to this Request on the basis that the Request is vague and ambiguous as
12 to the breadth of the phrase "work remotely," and Defendant will not speculate at its peril.

13 Defendant objects to this Request to the extent that this Request seeks the disclosure of private
14 information about third party individuals. Defendant is unable to disclose this private information
15 concerning third parties as it is protected from disclosure by fundamental privacy principles, privileges,
16 and laws, including, but not limited to, the First Amendment of the United States Constitution and Article
17 1 of the California Constitution.

18 Defendant objects to the extent that this Request seeks confidential trade secret and proprietary
19 business information. To the extent any of the documents Defendant agrees to produce are confidential or
20 trade secrets, these documents will be produced upon entry of and in accordance with a protective order.
21 Defendant objects to this Request to the extent it seeks the production of information protected by the
22 attorney-client privilege, the attorney work product doctrine, and any other applicable privilege or
23 doctrine.

24 IXL has performed a reasonable and proportional search for relevant documents and is producing
25 documents that it is aware of and that it believes are reasonably relevant to this Request, which are
26 available communications about the working remotely plans for employees in Duane's job category
27 (product analyst) and supervised by David Keyes or Kate Mattison during the Relevant Period. Discovery
28 is ongoing, and Defendant will supplement this Request as information becomes available.

1 25. Defendant's federal and state income tax returns for 2014 to the present. If Defendant's
2 2017 income tax returns are not available, then produce copies of Defendant's estimated tax return.

3 **RESPONSE:** Defendant objects to this Request on the basis that it is not reasonably calculated to the
4 discovery of admissible evidence. Defendant's income and tax returns have no bearing on or relation to
5 Plaintiff's claims in this case. Defendant objects to this Request on the basis that it is unduly burdensome,
6 overly broad, and disproportional to the needs of this case. Defendant further objects that the Request is
7 not proportional to the needs of the case, considering the importance of the issues at stake in the action,
8 the amount in controversy, the parties' relative access to relevant information, the parties' resources, and
9 the importance of the discovery in resolving the issues.

10 Defendant further objects to the extent that this Request seeks confidential and financial business
11 information, which are protected from disclosure. Defendant will not produce any financial or proprietary
12 information, including information related to profit margins, which is secret and vitally important to
13 Defendant's business health and reputation. Disclosure of Defendant's financial business information
14 would put Defendant at a competitive disadvantage vis-à-vis its market competitors. To the extent any of
15 the documents Defendant agrees to produce are confidential or trade secrets, these documents will be
16 produced upon entry of a protective order.

17 Defendant objects to this Request to the extent that it seeks the production of information protected
18 by the attorney-client privilege, the attorney work productive doctrine, and any other applicable privilege
19 or doctrine.

20 No documents will be produced.

21 26. All communications concerning Duane's performance evaluations during the relevant time
22 period among or between:

- 23 a. Duane and IXL;
- 24 b. IXL's manager(s), supervisor(s), including CEO Paul Mishkin; and
- 25 c. IXL's human resources representative(s).

26 **RESPONSE:** Please see Response to Request No. 1. Defendant further objects on the basis that this
27 Request is vague and ambiguous as to the meaning of the term "performance evaluations," and Defendant
28 will not speculate at its peril. Please also see documents previously produced in the NLRB proceeding and

1 reproduced herewith as NLRB-IXL000001 to NLRB-IXL000799. Specifically, see documents produced
2 in response to Documents to be Produced Nos. 1 and 5 in the NLRB's subpoena duces tecum to IXL (IXL-
3 0840 to IXL-0844). The confidentiality designations in these documents are to apply in this case and
4 pursuant to the entry of and in accordance with a protective order. Discovery is ongoing, and Defendant
5 will supplement this Request as information becomes available.

6 27. All documents concerning any written performance evaluations prepared for or provided
7 to Duane.

8 **RESPONSE:** Please see Response to Request No. 3. Defendant further objects on the basis that this
9 Request is vague and ambiguous as to the meaning of the term "performance evaluations," and Defendant
10 will not speculate at its peril.

11 28. All documents concerning any compensation decisions made for Duane.

12 **RESPONSE:** Please see Response to Request No. 3. Defendant further objects on the basis that this
13 Request is not reasonably calculated to the discovery of admissible evidence and seeks information that
14 has no relevance to the controversies at issue in this case.

15
16 Dated: January 29, 2018

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

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19 **Natasha R. Menezes (Pro Hac Vice)**
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20
21 -and-

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IXL Learning, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

U.S. EQUAL EMPLOYMENT OPPORTUNITY :
COMMISSION, :

Plaintiff, :

and :

ADRIAN SCOTT DUANE, :

Plaintiff-Intervenor, :

v. :

IXL LEARNING, INC., :

Defendant. :

**DEFENDANT’S ANSWERS TO
PLAINTIFF’S FIRST SET OF
REQUESTS FOR ADMISSIONS**

1 Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Defendant IXL Learning, Inc.
2 (“Defendant” or “IXL”), by and through its undersigned counsel, hereby answers Plaintiff U.S. Equal
3 Employment Opportunity Commission’s (“EEOC”) First Set of Requests for Admissions to Defendant
4 (“Request” or “Requests”) as follows:

5 **GENERAL OBJECTIONS**

6 1. Defendant objects to the Requests to the extent they are not permitted under the Federal
7 Rules of Civil Procedure. Without waiving this objection, Defendant agrees to respond to these questions
8 pursuant to Rule 36 in order to facilitate discovery in this civil action.

9 2. Defendant objects to the extent that the Requests seek information immune from
10 disclosure under the attorney-client and/or work product privileges, or any other applicable privilege or
11 doctrine.

12 3. Defendant further objects to the Requests to the extent that they are premature, overly
13 broad, unduly burdensome, would require undue expense to answer, or are beyond the scope of
14 permissible discovery.

15 4. Defendant’s responses to the Requests are without a waiver of, and with the expressed
16 reservation of:

17 a. All objections as to competency, relevancy, materiality, and admissibility of any
18 and all information contained in said responses; and

19 b. The right to object to the use of such information on any ground in any further
20 proceeding in this action (including trial of this action) or any other action.

21 5. Defendant further objects to the Requests to the extent they are vague, ambiguous, and/or
22 indefinite.

23 6. Defendant further objects to the Requests to the extent that any request, or any definition
24 or other introductory material associated with such request, purports to impose a greater duty of
25 supplementation than that required by law.

26 7. Defendant further objects to the Requests to the extent they seek confidential or trade
27 secret information without the entry of a protective order governing disclosure of same.

1 **ANSWER:** IXL admits only that in an email to Kate Mattison dated November 20, 2014, David Keyes
2 wrote, in part, that “Scott deserves an average/standard raise” and denies the remainder of this Request.

3 **REQUEST NO. 8:** The document marked IXL-1627 is a true and accurate copy of electronic
4 communications between David Keyes and Kate Mattison.

5 **ANSWER:** Admit.

6 **REQUEST NO. 9:** On December 19, 2014, Mr. Duane e-mailed Mr. Keyes seeking permission to
7 work from home 50% of the day upon his return to work to facilitate the healing of a post-operative
8 fistula.

9 **ANSWER:** Deny.

10 **REQUEST NO. 10:** Mr. Keyes was advised, before replying to Mr. Duane’s e-mail, that since IXL
11 allowed other Product Analysts to work remotely, IXL could risk getting sued if it did not allow Mr.
12 Duane to do so as well given Mr. Duane’s medical condition.

13 **ANSWER:** IXL denies the Request as stated as it mischaracterizes David Keyes’ correspondence with
14 Kate Mattison. Subject to this objection, IXL admits only that David Keyes, in electronic
15 communications with Kate Mattison on December 22, 2014, wrote, in part, that “we could risk getting
16 sued if we didn’t allow Scott to do so as well given his medical condition” and denies the remainder of
17 this Request.

18 **REQUEST NO. 11:** The document marked IXL-0817 is a true and accurate copy of the electronic
19 communications between David Keyes and Kate Mattison.

20 **ANSWER:** Admit.

21 **REQUEST NO. 12:** As of December 30, 2014, IXL permitted Product Analyst Gina Bland to work
22 remotely from her home in Washington D.C.

23 **ANSWER:** IXL objects on the basis that the Request seeks information that is not relevant to any
24 Party’s claims or defenses and that it mischaracterizes the working situation of Gina Bland. Subject to
25 these objections, IXL denies the Request.

26 **REQUEST NO. 13:** As of December 30, 2014, IXL had offered Mathew Blecher a full-time position
27 where he would be working remotely 100% of the time.

28

1 **ANSWER:** IXL objects on the basis that the Request seeks information that is not relevant to any
2 Party's claims or defenses and that it mischaracterizes the working situation of Matthew Bleecher and
3 the offer made to Matthew Bleecher. Subject to these objections, IXL denies the Request.

4 **REQUEST NO. 14:** Mr. Keyes drafted a Performance Annual Review of Mr. Duane's 2014
5 performance on January 5, 2015.

6 **ANSWER:** IXL objects on that the basis that the Request is vague and ambiguous as to the term
7 "drafted." Subject to this objection, IXL denies that David Keyes drafted the document titled Scott Duane
8 Performance Annual Review 2014 and bates labeled as IXL-1674 to IXL-1675 only on January 5, 2015,
9 and denies the remainder of the Request.

10 **REQUEST NO. 15:** The document marked IXL-1674 is a true and accurate copy of Mr. Duane's
11 Performance Annual Review 2014.

12 **ANSWER:** IXL admits only that the documents marked as IXL-1674 and IXL-1675 are true and
13 accurate copies of Mr. Duane's Performance Annual Review 2014 and denies the remainder of the
14 Request.

15 **REQUEST NO. 16:** In a meeting with Mr. Keyes on January 6, 2015, Mr. Duane voiced a complaint
16 about discrimination.

17 **ANSWER:** IXL objects on the basis that the Request is vague and ambiguous as to the term
18 "complaint." Subject to this objection, IXL admits this Request.

19 **REQUEST NO. 17:** On January 6, 2015 Mr. Keyes informed CEO Paul Mishkin that Mr. Duane had
20 voiced a complaint about discrimination.

21 **ANSWER:** IXL objects on the basis that the Request is vague and ambiguous as to the term
22 "complaint." Subject to this objection, IXL admits only that David Keyes testified that he spoke with
23 Lenore Ockerberg, Maricela Prado, and Paul Mishkin following David Keyes' meeting with Mr. Duane
24 on January 6, 2015, and denies the remainder of the Request.

25 **REQUEST NO. 18:** On January 6, 2015 at 10:33 AM Maricela Prado compiled, for Mr. Mishkin,
26 emails that she exchanged with Mr. Duane from September 23, 2014 through November 2014.

27 **ANSWER:** IXL admits only that on January 6, 2015 at 10:33 AM, Maricela Prado sent an email to
28 Paul Mishkin, Lenore Ockerberg, and David Keyes in which she stated, in part, "I've compiled the initial

1 e-mails between Scott and I, which began the day after Brad’s last day” and that this email included
2 emails among and/or between, in part, Duane, Maricela Prado, and David Keyes from September 23,
3 2014 to November 2014. IXL denies the remainder of this Request.

4 **REQUEST NO. 19:** The document marked IXL-1656 is a true and accurate copy of an electronic
5 communication that Maricela Prado sent to Paul Mishkin.

6 **ANSWER:** IXL admits only that the document marked IXL-1656 is a true and accurate copy of part
7 of an electronic communication that Maricela Prado sent to Paul Mishkin, copying Lenore Ockerberg
8 and David Keyes, on January 6, 2015, and denies the remainder of the Request.

9 **REQUEST NO. 20:** On January 7, 2015 at 4:27AM, Mr. Mishkin emailed Mr. Duane to set up a
10 meeting on January 8, 2015 at 11:00 AM.

11 **ANSWER:** IXL admits only that on January 7, 2015, Paul Mishkin emailed Mr. Duane, stating, in
12 part, “I’d like to meet with you Thursday at 11 to discuss this,” and denies the remainder of the Request.

13 **REQUEST NO. 21:** In an email on January 7, 2015 at 8:06 AM, Mr. Duane confirmed the meeting
14 with Mr. Mishkin.

15 **ANSWER:** IXL admits only that on January 7, Mr. Duane emailed Paul Mishkin, stating, in part,
16 “That sounds good. Looking forward to speaking with you.” IXL denies the remainder of the Request.

17 **REQUEST NO. 22:** The document marked IXL-1663 is a true and accurate copy of the electronic
18 communications between Mr. Duane and Mr. Mishkin.

19 **ANSWER:** Admit.

20 **REQUEST NO. 23:** On January 7, 2015 at 11:04 AM, Maricela Prado sent a copy of a Glassdoor.com
21 post entitled “Micromanaged and Problematic” to Paul Mishkin, David Keyes, and Lenore Ockerberg.

22 **ANSWER:** Admit.

23 **REQUEST NO. 24:** The document marked IXL-1666 is a true and accurate copy of that electronic
24 transmission.

25 **ANSWER:** IXL objects on the basis that the Request is vague and ambiguous as to the term “that.”
26 Subject to this objection, IXL admits only that the document marked IXL-1666 is a true and accurate
27 copy of part of an electronic communication that Maricela Prado sent to Paul Mishkin, copying Lenore
28 Ockerberg and David Keyes, on January 7, 2015, and denies the remainder of the Request.

1 **REQUEST NO. 25:** Mr. Mishkin was aware on January 7, 2015 that Mr. Duane complained on
2 Glassdoor.com that “There are no politics if you fit in. If you don’t – that is, if you’re not a family-
3 oriented white or Asian straight or mainstream gay person with 1.7 kids who really likes softball – then
4 you’re likely to find yourself on the outside. Treatment in the workplace, in terms of who gets flexible
5 hours, interesting projects, praise, promotions, and a big yearly raise, is different and seems to run right
6 along these characteristics.”

7 **ANSWER:** Deny.

8 **REQUEST NO. 26:** On January 7, 2015 IXL Learning, Inc. concluded that Mr. Duane authored the
9 Glassdoor.com post entitled “Micromanaged and Problematic.”

10 **ANSWER:** Deny.

11 **REQUEST NO. 27:** Mr. Mishkin understood that Mr. Duane was claiming in his post that if you’re not
12 white or Asian, if you are not straight or mainstream gay, if you don’t like sports, if you don’t have kids,
13 then you will be discriminated against at IXL.

14 **ANSWER:** Deny.

15 **REQUEST NO. 28:** On January 7, 2015 Mr. Mishkin concluded that Mr. Duane’s allegations of
16 discrimination were untrue.

17 **ANSWER:** Deny. IXL also denies that Duane’s Glassdoor.com post contained allegations of
18 discrimination.

19 **REQUEST NO. 29:** After reading Mr. Duane’s Glassdoor.com post, Mr. Mishkin did not review
20 promotion decisions made in the past year.

21 **ANSWER:** IXL objects to this request as being vague and ambiguous. Subject to this objection, IXL
22 denies the Request.

23 **REQUEST NO. 30:** After reading Mr. Duane’s Glassdoor.com post, Mr. Mishkin did not review salary
24 increase decisions made in the past year.

25 **ANSWER:** IXL objects to this request as being vague and ambiguous. Subject to this objection, IXL
26 denies the Request.

27 **REQUEST NO. 31:** After reading Mr. Duane’s Glassdoor.com post, Mr. Mishkin did not review bonus
28 decisions made in the past year.

1 **ANSWER:** IXL objects to this request as being vague and ambiguous. Subject to this objection, IXL
2 denies the Request.

3 **REQUEST NO. 32:** On January 7, 2015 Paul Mishkin decided to terminate Mr. Duane because of Mr.
4 Duane's Glassdoor.com post.

5 **ANSWER:** IXL objects to this request as being vague and ambiguous. Subject to this objection, IXL
6 denies the Request.

7 **REQUEST NO. 33:** On January 7, 2015 IXL directed someone from the Operations department to clear
8 out Mr. Duane's work station while Mr. Duane was meeting with Mr. Mishkin.

9 **ANSWER:** IXL objects to this request as being vague and ambiguous. Subject to this objection, IXL
10 denies the Request.

11 **REQUEST NO. 34:** On January 7, 2015 at 4:21 PM Mr. Keyes postponed Mr. Duane's Annual Review
12 from January 8, 2015 to January 9, 2015.

13 **ANSWER:** IXL admits only that on January 7, 2015 at 4:21 PM, David Keyes changed the date of
14 Mr. Duane's Annual Review to January 9, 2015 from 9am to 10:30am Pacific Time, and denies the
15 remainder of the Request.

16 **REQUEST NO. 35:** When Mr. Keyes postponed Mr. Duane's Annual Review, Mr. Keyes was aware
17 that Mr. Duane would be terminated on January 8, 2015.

18 **ANSWER:** IXL admits only that David Keyes testified that, when he changed Mr. Duane's Annual
19 Review to January 9, 2015, he knew that Mr. Duane would no longer be employed, and denies the
20 remainder of the Request.

21 **REQUEST NO. 36:** The document marked IXL-1697 is a true and accurate copy of the appointment
22 change.

23 **ANSWER:** IXL objects on the basis that the Request is vague and ambiguous as to the reference to
24 "the appointment change." Subject to this objection, IXL admits only that the document marked IXL-
25 1697 is a true and accurate copy of Mr. Duane's Annual Review being changed to January 9, 2015, and
26 denies the remainder of the Request.

27 **REQUEST NO. 37:** On January 8, 2015 Paul Mishkin terminated Mr. Duane because of Mr. Duane's
28 Glassdoor.com post.

1 **ANSWER:** Admit.

2 **REQUEST NO. 38:** Mr. Duane is the only employee that IXL has terminated because of a
3 Glassdoor.com post.

4 **ANSWER:** IXL admits only that Mr. Duane is the only employee that IXL has terminated from July
5 2013 to January 2015 because of a Glassdoor.com post when IXL knew who authored a specific
6 Glassdoor.com post, and IXL denies the remainder of the Request.

7 **REQUEST NO. 39:** IXL received notice of Mr. Duane's EEOC charge by a Notice of Charge of
8 Discrimination dated May 4, 2015, which included a copy of Mr. Duane's charge.

9 **ANSWER:** IXL admits only that, at some point, it received a copy of Duane's Notice of Charge of
10 Discrimination signed by Kevin J. Berry dated May 4, 2015, and denies the remainder of the Allegations.

11 **REQUEST NO. 40:** IXL000047 is a true and accurate copy of the Notice of Charge of Discrimination
12 dated May 4, 2015.

13 **ANSWER:** IXL objects on the basis that the bates number referenced is not the bates number system
14 used in this case. Subject to this objection, IXL admits only that IXL 0079 is a copy of the Notice of
15 Charge of Discrimination, and denies the remainder of the Request.

16 **REQUEST NO. 41:** Mr. Duane alleged retaliation in his EEOC charge of discrimination.

17 **ANSWER:** IXL admits only that, in Mr. Duane's Charge of Discrimination, Mr. Duane stated that he
18 believed that "IXL discriminated against me because of my sex, gender identity, gender expression,
19 disability, request for reasonable accommodation, and decision to take protected medical leave, and
20 retaliated against me for complaining of this discrimination," and denies the remainder of the Request.

21 **REQUEST NO. 42:** IXL receive a "Determination" from the EEOC dated April 22, 2016.

22 **ANSWER:** IXL admits only that, at some point, IXL received a document titled "Determination" from
23 the EEOC dated April 22, 2016, and denies the remainder of the Request.

24 **REQUEST NO. 43:** EEOC's "Determination" provides that the EEOC determined there is reasonable
25 cause to believe that IXL discriminated against Adrian Scott Duane in retaliation for protesting against
26 discriminatory conduct in violation of Title VII and the Americans with Disabilities Act.

27 **ANSWER:** IXL objects to this request as being vague and ambiguous. Subject to this objection, IXL
28 denies the Request.

1 **REQUEST NO. 44:** EEOC_000001 is a true and accurate copy of EEOC's Determination dated April
2 22, 2016.

3 **ANSWER:** After making a reasonable inquiry of the information it knows or can readily obtain, IXL
4 lacks the knowledge and information to confirm or deny if the EEOC's document at EEOC_000001 is a
5 true and correct copy of the EEOC's Determination dated April 22, 2016.

6 **REQUEST NO. 45:** The EEOC engaged in conciliation efforts with IXL in June and July of 2016.

7 **ANSWER:** IXL objects to this Request as seeking irrelevant and inadmissible evidence pursuant to
8 FRE 408 and the disclosure of conciliation material deemed confidential pursuant to 42 U.S.C. §2000e-
9 5(b). Subject to these objections, IXL admits the Request.

10 **REQUEST NO. 46:** IXL received a letter dated July 28, 2016 indicating that the EEOC was not able
11 to secure an agreement to provide relief for the violation identified in the Commission's "Determination"
12 and that further conciliation efforts would be futile or non-productive.

13 **ANSWER:** Admit.

14 **REQUEST NO. 47:** EEOC_000201 is a true and accurate copy of EEOC's letter dated July 28, 2016.

15 **ANSWER:** After making a reasonable inquiry of the information it knows or can readily obtain, IXL
16 lacks the knowledge and information to confirm or deny if the EEOC's document at EEOC_
17 EEOC_000201 is a true and correct copy.

18 **REQUEST NO. 48:** Since at least 2014 IXL has filed an annual Employer Information EEO-1 report
19 (Standard Form 100) in compliance with obligations set forth in Title VII of the Civil Rights Act of 1964.

20 **ANSWER:** Admit.

21 **REQUEST NO. 49:** EEOC_000724 is a true and accurate copy of IXL's 2014 Employer Information
22 EEO-1 Report.

23 **ANSWER:** Deny.

24 **REQUEST NO. 50:** EEOC_000725 is a true and accurate copy of IXL's 2015 Employer Information
25 EEO-1 Report.

26 **ANSWER:** Deny.

27 **REQUEST NO. 51:** EEOC_000726 is a true and accurate copy of IXL's 2016 Employer Information
28 EEO-1 Report.

1 **ANSWER:** Deny.

2 **REQUEST NO. 52:** IXL created and prepared a list of employees terminated between July 2013
3 through June 2015 listing the employee's name, last day of employment, job title, and reason for
4 termination.

5 **ANSWER:** IXL admits only that the document marked IXL-1240 was prepared for and produced in
6 a separate administrative proceeding and that the document provides information under four columns
7 titled, "Full Name," "Last Day of Employment," "Job Title," and "Reason," and denies the remainder of
8 the Request.

9 **REQUEST NO. 53:** The document marked IXL-1240 is a true and accurate copy of that list of
10 terminated employees.

11 **ANSWER:** IXL admits only that the document marked IXL-1240 was prepared for and produced in
12 a separate administrative proceeding and in response to documents requested and/or a subpoena, and
13 denies the remainder of the Request.

14 **REQUEST NO. 54:** David Keyes prepared a Working Remotely Plan for Mr. Duane to follow upon
15 his return to work on December 30, 2014.

16 **ANSWER:** Deny.

17 **REQUEST NO. 55:** David Keyes provided the Working Remotely Plan to Mr. Duane on December
18 30, 2014.

19 **ANSWER:** Admit.

20 **REQUEST NO. 56:** The document marked IXL-1650 is a true and accurate copy of Scott Duane's
21 Working Remotely Plan.

22 **ANSWER:** Admit.

23 **REQUEST NO. 57:** IXL did not have a document titled "Employee Handbook" for employees prior to
24 April 2015.

25 **ANSWER:** Deny.

26 **REQUEST NO. 58:** The Employee Handbook produced at IXL-1740 and dated 4/21/2015 was IXL's
27 first official Employee Handbook.

28 **ANSWER:** Deny.

1 **REQUEST NO. 59:** The document marked IXL-1740 is a true and accurate copy of IXL's Employee
2 Handbook.

3 **ANSWER:** IXL admits only the document marked from IXL-1740 to IXL-1763 is a true and accurate
4 copy of one version of IXL's Employee Handbook, and denies the remainder of the Request.

5
6 Dated: April 9, 2018

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

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10
11 -and-

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT OPPORTUNITY : Case No.: 17-CV-02979-VC
COMMISSION, :

Plaintiff, :

and :

ADRIAN SCOTT DUANE, :

Plaintiff-Intervenor, :

v. :

IXL LEARNING, INC., :

Defendant. :

**DEFENDANT’S CORRECTED
RULE 26(a)(1) AMENDED
INITIAL DISCLOSURES**

1 Defendant IXL Learning, Inc. (“IXL” or “Defendant”), by and through its undersigned
2 counsel, and pursuant to Federal Rule of Civil Procedure Rule 26(a)(1), hereby submits its
3 Amended Initial Disclosures. These Amended Initial Disclosures (“Initial Disclosures”) are based
4 on information reasonably available to Defendant at this time. In addition, these Initial
5 Disclosures are made with the understanding that Defendant cannot anticipate all the positions
6 that it or Plaintiff U.S. Equal Employment Opportunity Commission (“Plaintiff” or “EEOC”) or
7 Plaintiff-Intervenor Adrian Scott Duane (“Duane” or “CP”) may take in this case. Defendant
8 therefore reserves the right to supplement these disclosures when and if additional information
9 becomes available and in accordance with Federal Rule of Civil Procedure 26.

10 Defendant makes these Initial Disclosures without waiving in any manner: (1) the right to
11 object on any basis permitted by law to the use of any information contained in these Initial
12 Disclosures for any purpose in any subsequent proceeding in this or any other action; and (2) the
13 right to object on any basis permitted by law to any discovery request or proceeding involving or
14 related to the subject matter of these Initial Disclosures. Further, Defendant’s Initial Disclosures
15 are made without waiving any privilege, including but not limited to, the attorney-client privilege
16 and/or the work-product privilege.

17 **I. PERSONS WHO MAY HAVE DISCOVERABLE INFORMATION**

18 Based on current available information, Defendant identifies the following individuals
19 who are likely to have discoverable knowledge regarding this matter:¹

20
21
22
23
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25
26
27 ¹ Individuals disclosed are believed to relate to or have information related to the issues in the instant action.
28 Disclosure of the names of the individuals identified herein is not intended to waive any privileged or work-product information that such individuals may have. Further, disclosure does not waive the parties’ obligation to comply with all discovery rules, including subpoenas and process.

Name	Subject Matter
1 Paul Mishkin 2 Chief Executive Officer 3 c/o Young Basile Hanlon & MacFarlane, P.C. 4 3001 W. Big Beaver Road, Suite 624 5 Troy, MI 48084 6 248-649-3333	Mr. Mishkin may testify regarding the employment relationship between the parties, the claims brought against Defendant, and the reason for Duane's termination.
7 David Keyes 8 Senior Program Manager 9 c/o Young Basile Hanlon & MacFarlane, P.C. 10 3001 W. Big Beaver Road, Suite 624 11 Troy, MI 48084 12 248-649-3333	Mr. Keyes may testify regarding the employment relationship between the parties, the claims brought against Defendant, and the reason for Duane's termination.
13 Maricela Prado 14 Former Human Resources Coordinator 15 IXL Learning, Inc. 16 777 Mariners Island Blvd. 17 Suite 600 18 San Mateo, CA 94404 19 650-743-4321	Ms. Prado may testify regarding the employment relationship between the parties, the claims brought against Defendant, and the reason for Duane's termination.
20 Kate Mattison 21 Vice President of Curriculum 22 c/o Young Basile Hanlon & MacFarlane, P.C. 23 3001 W. Big Beaver Road, Suite 624 24 Troy, MI 48084 25 248-649-3333	Ms. Mattison may testify regarding the employment relationship between the parties, the claims brought against Defendant, and the reason for Duane's termination.
26 Brad Marshall 27 Former Human Resources Manager at IXL 28 Learning, Inc. 1140 Whipple Avenue, #23 Redwood City, CA 94062 706-271-7745	Mr. Marshall may testify regarding the employment relationship between the parties, the claims brought against Defendant, and the reason for Duane's termination.
29 Adrian Scott Duane 30 c/o David Marek 31 The Marek Law Firm, Inc. 32 228 Hamilton Ave. 33 Palo Alto, CA 94301	Mr. Duane may testify regarding the employment relationship between the parties, the claims brought against Defendant, and the reason for his termination.
34 Lenore Ockerberg 35 Former Operations Manager at 36 IXL Learning, Inc. 37 32306 Ruth Court 38 Union City, CA 94587 650-773-1930	Ms. Ockerberg may testify regarding the employment relationship between the parties, the claims brought against Defendant, and the reason for Duane's termination.
39 Jennifer Gu 40 Chief Operating Officer 41 c/o Young Basile Hanlon & MacFarlane, P.C.	Ms. Gu may testify regarding the employment relationship between the parties, the claims

1 2	3001 W. Big Beaver Road, Suite 624 Troy, MI 48084 248-649-3333	brought against Defendant, and the reason for Duane's termination.
3 4 5	Karen Penner Former Corporate Recruiter at IXL Learning, Inc. 5201 Woodall Way Raleigh, NC 27613 415-404-0779	Ms. Penner may testify regarding the employment relationship between the parties, the claims brought against Defendant, and the reason for Duane's termination.
6 7 8 9	Joseph Kent Chief Technology Officer c/o Young Basile Hanlon & MacFarlane, P.C. 3001 W. Big Beaver Road, Suite 624 Troy, MI 48084 248-649-3333	Mr. Kent may testify regarding the employment relationship between the parties, the claims brought against Defendant, and the reason for Duane's termination.
10 11 12 13	Charla Rodney Former Human Resources Manager at IXL Learning, Inc. 1001 Mariposa Street, Apt. 208 San Francisco, CA 94107 415-728-6664	Ms. Rodney may testify regarding the employment relationship between the parties, the claims brought against Defendant, and the reason for Duane's termination.
14 15 16	Michael Pi Former Sales Consultant at IXL Learning, Inc. 681 Page Street, #6 San Francisco, CA 94117 321-626-1866	Mr. Pi may testify regarding the employment relationship between Duane and Defendant and the claims brought against Defendant.
17 18 19 20	Tatum Radcliffe Operations Manager c/o Young Basile Hanlon & MacFarlane, P.C. 3001 W. Big Beaver Road, Suite 624 Troy, MI 48084 248-649-3333	Ms. Radcliffe may testify regarding the employment relationship between Duane and Defendant and Duane's role as a product analyst.
21 22 23 24	Gary Yee Systems Administrator IXL Learning, Inc. 777 Mariners Island Blvd. Suite 600 San Mateo, CA 94404 650-372-4364	Mr. Yee may testify regarding the employment relationship between Duane and Defendant and Duane's role as a product analyst.
25 26 27 28	Jeffrey Peterson Former Customer Account Manager at IXL Learning, Inc. 1145 Alameda de las Pulgas #16 Belmont, CA 94002 952-913-8192	Mr. Peterson may testify regarding the employment relationship between Duane and Defendant and Duane's role as a product analyst.

<p>1 Mark Ritterhoff Former Software Engineer IXL Learning, Inc. 777 Mariners Island Blvd. Suite 600 San Mateo, CA 94404 443-465-1572</p>	<p>Mr. Ritterhoff may testify regarding the employment relationship between Duane and Defendant and Duane's role as a product analyst.</p>
<p>2 Isidora Milin Lead Curriculum Designer IXL Learning, Inc. 777 Mariners Island Blvd. Suite 600 San Mateo, CA 94404 217-417-3697</p>	<p>Ms. Milin may testify regarding the duties and responsibilities of a product analyst, the employment relationship between Duane and Defendant, and Duane's reason for his termination.</p>
<p>3 Richard Cudney Senior Curriculum Designer IXL Learning, Inc. 777 Mariners Island Blvd. Suite 600 San Mateo, CA 94404 312-636-1631</p>	<p>Mr. Cudney may testify regarding the duties and responsibilities of a product analyst and the employment relationship between Duane and Defendant.</p>
<p>4 Jeremy Murphy Special Projects Manager, Curriculum Design c/o Young Basile Hanlon & MacFarlane, P.C. 3001 W. Big Beaver Road, Suite 624 Troy, MI 48084 248-649-3333</p>	<p>Mr. Murphy may testify regarding the employment relationship between Duane and Defendant and Duane's role as a product analyst.</p>
<p>5 Nina Wu Former Product Analyst at IXL Learning, Inc. 110 Everson Street San Francisco, CA 94131 239-297-5604</p>	<p>Ms. Wu may testify regarding the duties and responsibilities of a product analyst, Duane's reason for his termination, the employment relationship between Duane and Defendant, and Duane's medical condition.</p>
<p>6 Nemo Curiel Former Product Analyst at IXL Learning, Inc. 298 Fairmount Avenue, #3 Oakland, CA 94611</p>	<p>Mr. Curiel may testify regarding the duties and responsibilities of a product analyst, Duane's reason for his termination, the employment relationship between Duane and Defendant, and Duane's medical condition.</p>
<p>7 Jessica Morse Former Product Analyst at IXL Learning, Inc. 1440 Mason Street San Francisco, CA 94133 404-805-5154</p>	<p>Ms. Morse may testify regarding the duties and responsibilities of a product analyst, the employment relationship between Duane and Defendant, Duane's reason for his termination, and Duane's medical condition.</p>

1 Defendant also identifies any individual who is not specifically listed herein, but who may
2 be identified in documents produced or to be produced by any party related to any claim,
3 allegation, or defense at issue in this case. Defendant reserves the right to call any person
4 necessary for impeachment or rebuttal or to produce, identify, or authenticate any document.

5 In addition to the above named individuals, Defendant incorporates by reference the
6 individuals disclosed pursuant to Federal Rule of Civil Procedure 26(a) by Plaintiff in this action
7 as if set forth fully herein. Defendant reserves the right to modify or supplement this list of
8 individuals who may have discoverable information based on its investigation and further
9 discovery pursuant to Federal Rule of Civil Procedure 26(e) and the Local Rules.

10 **II. DOCUMENTS LIKELY TO BE USED TO SUPPORT CLAIMS AND DEFENSES**

11 Below is a list of the documents, electronically stored information, and tangible things that
12 Defendant has in its possession and of which it is currently aware that it may use to support its
13 claims. Defendant reserves the right to supplement or amend the below list.

14 Any description of documents in these Initial Disclosures shall not be construed as
15 admissions as to the relevance or admissibility of the identified materials or a waiver of attorney-
16 client privilege, work-product exceptions, and/or any other privilege or exception afforded to
17 Defendant under the law.

- 18 1. Duane's complete personnel file, including performance reviews and employment
19 records;
- 20 2. Defendant's Employee Handbook;
- 21 3. All electronically stored email communications regarding CP's employment at IXL;
- 22 4. All electronically stored email communications between CP and Defendant;
- 23 5. All correspondence between Defendant and Plaintiff;
- 24 6. All correspondence between Defendant and CP;
- 25 7. Documents pertaining to CP's medical history;
- 26 8. Documents pertaining to CP's employment, including performance reviews and email
27 communications;
- 28

- 1 9. Any and all records of CP;
- 2 10. Any and all documents identified in Plaintiff's Initial Disclosures;
- 3 11. Any and all documents identified in subsequent discovery responses;
- 4 12. Any and all documents introduced in ongoing discovery investigations or produced
5 by third parties in this proceeding, including documents produced by the National
6 Labor Relations Board (the "NLRB");
- 7 13. Datasheet on the "Glassdoor Essentials" package, labeled as Joint Exhibit 1 in the
8 NLRB trial held on November 5, 2015 before Administrative Law Judge Gerald
9 Etchingham in the matter of Adrian Scott Duane against Defendant (Case No. 20-CA-
10 153625) ("NLRB Trial");
- 11 14. CP's Working Remotely Plan, labeled as Respondent's Exhibit 1 in the NLRB Trial;
- 12 15. CP's Introductory Period Evaluations dated September 12, 2013 and November 6,
13 2013, labeled as Respondent's Exhibit 2 in the NLRB Trial;
- 14 16. Facebook conversation between CP, Nemo Curiel, Nina Wu, and Jessica Morse,
15 labeled as Respondent's Exhibit 3 in the NLRB Trial;
- 16 17. Email correspondence between CP and David Keyes and CP and Nina Wu in
17 December of 2014, labeled as Respondent's Exhibit 4 in the NLRB Trial;
- 18 18. Email correspondence from CP to David Keyes dated January 7, 2015, labeled as
19 Respondent's Exhibit 5 in the NLRB Trial;
- 20 19. Email correspondence between CP and Paul Mishkin dated January 7, 2015, labeled
21 as Respondent's Exhibit 6 in the NLRB Trial;
- 22 20. CP's Personnel Data Change Form with an effective date of October 31, 2014, labeled
23 as Respondent's Exhibit 7 in the NLRB Trial;
- 24 21. Email correspondence from Maricela Prado to Paul Mishkin dated January 7, 2015,
25 labeled as Respondent's Exhibit 8 in the NLRB Trial; and
26
27
28

22. Screenshots from Glassdoor.com providing an overview and information regarding Glassdoor’s mission and protection of member anonymity, labeled as Respondent’s Exhibit 9 in the NLRB Trial.

III. COMPUTATION OF DAMAGES

Defendant is not seeking damages.

IV. INSURANCE AGREEMENTS

Defendant is presently unaware of any insurance agreements under which an insurance business may be liable to satisfy all or part of a possible judgment in this action or indemnify or reimburse payments made to satisfy a judgment.

Dated: February 21, 2018

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

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

-and-

Imai, Radlock, Keeney & Cordery, LLP
R. Randy Wertz
rrwerts@itkc.com

*Attorneys for Defendant
IXL Learning, Inc.*

PROOF OF SERVICE

STATE OF MICHIGAN, COUNTY OF OAKLAND
U.S. Equal Employment Opportunity Commission v. IXL Learning, Inc.
Case No.: 17-CV-02979

I am employed in the County of Oakland, State of Michigan; I am over the age of eighteen (18) and not a party to the within action; my business address is 3001 W. Big Beaver Road Suite 624, Troy, MI 48084. On February 21, 2018, I served the foregoing document(s) described as **Defendant’s Corrected Rule 26(a)(1) Amended Initial Disclosures** on all interested parties to this action by delivering a copy thereof via electronic mail to each of said interested parties at the following address(es):

Ami Sanghvi, Senior Trial Attorney Marcia Mitchell, Supervisory Trial Attorney Equal Employment Opportunity Commission 350 The Embarcadero, Suite 500 San Francisco, CA 94105 Ami.sanghvi@eoc.gov Marcia.mitchell@eoc.gov	Attorneys for Plaintiff U.S. Equal Employment Opportunity Commission
David Marek The Marek Law Firm, Inc. 228 Hamilton Avenue Palo Alto, CA 94301 david@marekfirm.com	Attorney for Plaintiff- Intervenor Adrian Scott Duane

- (BY MAIL)** I am readily familiar with the firm's business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business at our firm's office address in Troy, Michigan. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.
- (BY ELECTRONIC SERVICE)** I caused such document to be delivered electronically via e-mail to the e-mail address of the addressee(s) set forth above.
- (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury that the above is true and correct.

Executed on February 21, 2018, at Troy, Michigan.

 /s/ *Natasha R. Menezes*
 Natasha R. Menezes

1 ROBERTA L. STEELE, SBN 188198 (CA)
2 MARCIA L. MITCHELL, SBN 18122 (WA)
3 AMI SANGHVI, SBN 4407672 (NY)
4 U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
5 450 Golden Gate Avenue, 5th Fl. West, POB 36025
6 San, Francisco, CA 94102
7 Telephone No. (415) 522-3071
8 ami.sanghvi@eoc.gov

9 *Attorneys for Plaintiff*

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 U.S. EQUAL EMPLOYMENT
13 OPPORTUNITY COMMISSION,

14 Plaintiff,

15 ADRIAN SCOTT DUANE,

16 Plaintiff-Intervenor,

17 vs.

18 IXL LEARNING, INC.,

19 Defendant

Case No.: 3:17-cv-02979

**EEOC'S SECOND SUPPLEMENTAL
DISCLOSURES PURSUANT TO FED. R.
CIV. P. 26(A)(1)**

20 Pursuant to Federal Rule of Civil Procedure 26(a)(1), Plaintiff Equal Employment
21 Opportunity Commission (EEOC) submits the following Second Supplemental Disclosures. In
22 providing these disclosures, EEOC does not withdraw previous disclosures and does not waive
23 any objections regarding the production, use, or admissibility of all or part of these Disclosures.
24 EEOC reserves its right to amend or supplement these Disclosures.

- 25 (i) Witnesses: The name and, if known, the address and telephone number of each individual
26 likely to have discoverable information – along with the subjects of that information –
27 that the disclosing party may use to support its claims or defenses, unless the use would
28 be solely for impeachment.

Adrian Scott Duane
c/o Equal Employment Opportunity Commission
450 Golden Gate Ave., 5th Fl. W.,
San Francisco, CA 94102

1 Mr. Duane has knowledge of the facts alleged in the EEOC's Complaint and damages he
2 suffered when Defendant retaliated against him. Mr. Duane also has knowledge of facts related
3 to defenses asserted by Defendant.

4 Jenna S. Mandis
5 1538 Lexington Ave
6 El Cerrito, CA 94530
7 408-204-1152

8 Ms. Mandis has knowledge of the facts alleged in the EEOC's Complaint and damages
9 Mr. Duane suffered when Defendant retaliated against him. Ms. Mandis also has knowledge of
10 facts related to defenses asserted by Defendant.

11 **Current or Former IXL employees**

12 The following witnesses are current or former employees of Defendant that have
13 information regarding EEOC's claims. These individuals may have information relating to Mr.
14 Duane's hiring, employment, performance, productivity, and the decision to terminate him.
15 They may also have information related to Mr. Duane's experiences while working at IXL.
16 They may provide information relating to IXL's use of Glassdoor.com, including the company's
17 encouragement to post on the website and to monitor employee posts, including Mr. Duane's;
18 any actions taken by IXL in response to employee posts on Glassdoor.com, specifically Mr.
19 Duane's post giving rise to the instant action. The following individuals also may have
20 information related to IXL's policies and procedures for handling reasonable accommodation
21 requests and discrimination complaints, and its treatment of employees who complain about
22 discrimination or otherwise unfair employment practices. The individuals will also have
23 information about the content and frequency of anti-discrimination training the company
24 provided to new and existing employees and managers. The last known addresses and telephone
25 numbers of the following individuals are in Defendant's possession.

- 26 1. Paul Mishkin, CEO
- 27 2. Jennifer Gu, Chief Operating Officer
- 28 3. Joseph Kent, Chief Technology Officer
4. David Keyes, Senior Program Manager

- 1 5. Julia Bushkov, HR Manager
- 2 6. Kate Mattison, VP of Curriculum
- 3 7. Jeremy Murphy, Special Projects Manager, Curriculum Design
- 4 8. Isidora Milin, Lead Curriculum Designer
- 5 9. Gary Yee, Systems Administrator
- 6 10. Tatum Radcliffe, Operations Manager
- 7 11. Richard Cudney, Senior Curriculum Designer
- 8 12. Maricela Prado, Former HR Coordinator
- 9 13. Karen Penner, Former Recruitment Manager
- 10 14. Lenore Ockerberg, Former Operations Manager
- 11 15. Brad Marshall, Former HR Manager
- 12 16. Nina Wu, Former Product Analyst
- 13 17. Nemo Curiel, Former Product Analyst
- 14 18. Jessica Morse, Former Product Analyst
- 15 19. Charla Rodney, Former HR Manager
- 16 20. Victoria Keliioomalua, Former HR Manager
- 17 21. Michael Pi, Former Sales Consultant
- 18 22. Jeffrey Peterson, Former Customer Account Manager
- 19 23. Mark Ritterhoff, Former Software Engineer
- 20 24. Joshua Gevirtz, Former Software Engineer
- 21 25. Stephen Chait, Former Software Engineer

18 The EEOC also identifies any individual who is not specifically listed herein, but who
19 may be identified in documents produced or to be produced by any party related to any claim,
20 allegation, or defense at issue in this case. Pursuant to Fed. R. Civ. P. 26, the EEOC reserves the
21 right to call any person necessary for impeachment or rebuttal or to produce, identify, or
22 authenticate any document.

23 In addition to the above-named individuals, the EEOC incorporates by reference the
24 individuals disclosed or that will be disclosed pursuant to Federal Rule of Civil Procedure 26(a)
25 by Defendant in this action as if set forth fully herein.

- 26 (ii) Documents: a copy—or a description by category and location—of all documents,
27 electronically stored information, and tangible things that the disclosing party has in its
28 possession, custody, or control and may use to support its claims or defenses, unless the
use would be solely for impeachment.

1 In addition to the documents noted in the EEOC's First Initial Disclosures dated August
2 15, 2017, the EEOC may also rely on any documents produced during discovery by either the
3 EEOC or Defendant to support its claims or refute defenses.

4 (iii) Damages: a computation of each category of damages claimed by the disclosing party—
5 who must also make available for inspection and copying as under Rule 34 the
6 documents or other evidentiary material, unless privileged or protected from disclosure,
on which each computation is based, including materials bearing on the nature and extent
of injuries suffered.

7 The EEOC seeks compensatory damages for emotional distress, other incidental expenses
8 incurred, and punitive damages. Although the EEOC's compensatory and punitive damages are
9 statutorily capped at \$200,000, Mr. Duane is nonetheless entitled to backpay, lost bonuses, and
10 other benefits beyond the statutory cap. Mr. Duane's annual salary at the time of his termination
11 was approximately \$82,400 but he anticipated at least a 5% raise in salary for the coming year.
12 Mr. Duane was unemployed despite efforts to obtain employment for a period of approximately
13 one year. The EEOC also seeks any potential lost bonuses and the value of other benefits will be
14 the subject of discovery through the course of litigation.

15 The EEOC also seeks injunctive relief to prevent future discrimination as stated in the
16 Complaint.

17 (iv) Insurance: for inspection and copying as under Rule 34, any insurance agreement under
18 which an insurance business may be liable to satisfy all or part of a possible judgment in
19 the action or to indemnify or reimburse for payments made to satisfy the judgment.

20 This information is only applicable to Defendant and solely in the possession of
21 Defendant.

22 Dated: April 13, 2018

U.S. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

24 By: /s/ Ami Sanghvi
25 AMI SANGHVI
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I am serving EEOC's Second Supplemental Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1) on April 13, 2018 to Defendant, IXL Learning, Inc. by electronic mail to the following attorneys of record:

David Marek
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Attorney for Plaintiff-Intervenor

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Attorneys for Defendant

Dated: April 13, 2018

/s/ Ami Sanghvi

Ami Sanghvi
Senior Trial Attorney
Equal Employment Opportunity Commission
450 Golden Gate Avenue, 5th Floor W., POB 36025
San Francisco, CA 94102
Tel: (415) 522-3071

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10 ami.sanghvi@eoc.gov

11 *Attorneys for Plaintiff EEOC*

12
13 **UNITED STATES DISTRICT COURT**
14
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 U.S. EQUAL EMPLOYMENT OPPORTUNITY
17 COMMISSION,

18 Plaintiff,

19 ADRIAN SCOTT DUANE,

20 Plaintiff-Intervenor,

21 vs.

22 IXL Learning, Inc.,

23 Defendant.

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

**EEOC’S RESPONSES AND OBJECTIONS
TO DEFENDANT’S FIRST SET OF
INTERROGATORIES TO
PLAINTIFF EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION**

24 **RESPONDING PARTY: Plaintiff Equal Employment Opportunity Commission**
25 **Responses to Defendant’s First Set of Interrogatories Nos. 1 – 21.**

26 Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Plaintiff Equal Employment
27 Opportunity Commission, by and through its undersigned counsel, objects and responds to
Defendant IXL Learning, Inc.’s First Set of Interrogatories. Plaintiff’s responses are based upon

1 information currently available. Plaintiff will comply with Fed. R. Civ. P. 26(e) and supplement its
2 discovery responses in a timely manner, if necessary.

3 **GENERAL OBJECTIONS**

4 1. Plaintiff objects to Defendant's interrogatories to the extent that they purport to impose
5 obligations beyond those imposed or permitted by the Federal Rules of Civil Procedure, the Local
6 Rules of the Northern District of California, or applicable court orders.

7 2. Plaintiff objects to the interrogatories to the extent that they seek disclosure of information
8 protected by the attorney client privilege, the attorney work product doctrine, the governmental
9 deliberative process privilege, or any other applicable privilege, immunity, statute, regulation, rule,
10 or court order.

11 3. Plaintiff's response to any interrogatory shall not be deemed to constitute an admission that
12 any particular document exists, is relevant, or is admissible as evidence.

13 4. Plaintiff objects to the interrogatories to the extent that they seek information previously
14 produced by Plaintiff to Defendant in the context of this lawsuit as such requests are unduly
15 burdensome and duplicative.

16 5. Plaintiff objects to the interrogatories to the extent that they seek information already in the
17 possession, custody, or control of Defendant, and to the extent they seek publicly available
18 documents that are at least as readily available to Defendant as they are to Plaintiff.

19 6. Plaintiff objects to the interrogatories to the extent that they seek the disclosure of private or
20 confidential information.

21 7. Plaintiff objects to the interrogatories as overbroad to the extent that they are unlimited in
22 temporal scope.

23 8. Plaintiff objects to the interrogatories to the extent that they (a) call for speculation,
24 conjecture, opinion, or legal conclusion; (b) assume the truth of the facts not proven or facts not in
25

1 evidence; or (c) characterize facts, circumstances, claims or defenses underlying this lawsuit. By
 2 making these responses, the EEOC does not concede the accuracy of any assertions, implications, or
 3 suppositions underlying the interrogatories or any papers filed by Defendant in this lawsuit.

4 INTERROGATORIES

5 **INTERROGATORY NO. 1:** State Duane's full name, any names by which he was
 6 previously known, the dates (if any) on which his name was legally changed, his current address,
 7 and all address that he has resided at for the preceding three (3) years.
 8

9 **ANSWER:** The EEOC objects to the extent that the Interrogatory exceeds the scope of discovery
 10 permitted under Fed. R. Civ. P. 26(b) because it seeks information that is not relevant to any party's
 11 claims or defenses. Plaintiff also objects on grounds that the information sought is confidential and
 12 private.
 13

14 Subject to and without waiving these objections, Mr. Duane's legal name since 2009 has
 15 been Adrian Scott Campe Duane. Mr. Duane's most recent three-year residential history includes:

16 398 Euclid Ave, Apt 108, Oakland CA 94610 (Jan 2016 - present)

17 170 Vernon Terrace, Oakland, CA 94606 (Dec 2015)

18 8109 Ney Ave, Oakland, CA 94605 (Oct - Dec 2015)

19 1538 Lexington Ave, El Cerrito, CA 94530 (May - Oct 2015)

20 2303 Park Blvd, Apt 5, Oakland CA 94606 (until May 2015)

21 **INTERROGATORY NO. 2:** Please state the full name, current address, telephone number,
 22 and business title (if any) of all persons who assisted in providing information used in responding to
 23 these interrogatories, and for each person listed, state the number of the interrogatory for which they
 24 provided assistance.
 25

26 **ANSWER:** The EEOC objects to the extent this discovery request is overbroad, vague, and unduly
 27

1 burdensome. The request for “all persons who assisted in providing information used in responding
2 to these interrogatories” does not limit the information to substantive information and may be
3 seeking information protected by the attorney work product, the common-interest privilege, or the
4 government deliberative privilege.

5 Subject to and without waiving these objections, the EEOC responds that Plaintiff-
6 Intervenor, Adrian Scott Duane, and his counsel, David Marek, assisted in providing substantive
7 information for each interrogatory.

8 **INTERROGATORY NO. 3:** Identify all persons who you believe may have knowledge of facts or
9 possess documents that support or contradict the allegations in your Complaint. For each person,
10 provide their full name, address, telephone number, and description of facts you believe they have
11 knowledge of or documents they possess.

12 **ANSWER:** The EEOC objects to this Interrogatory on the grounds that it exceeds the scope of
13 discovery permitted under Fed. R. Civ. P. 26(b). The request seeks irrelevant information that is
14 unreasonably cumulative or duplicative and not proportional to the needs of the case. The request
15 seeks the identity of all persons who “may have” knowledge or facts or possess documents that
16 support or contradict the allegations in the Complaint. Identification of an individual with tangential
17 knowledge that Mr. Duane was fired will not lead to discovery of information that will assist the
18 parties in resolving the case. The burden of responding to this overbroad Interrogatory outweighs
19 any likely benefit. Finally, the request is also duplicative because the EEOC’s Fed. R. Civ. P. 26(a)
20 Initial Disclosures, previously produced to Defendant, identify individuals likely to have
21 discoverable information who the EEOC may rely upon to support its claims.

22 **INTERROGATORY NO. 4:** Identify all other legal actions, civil or criminal, that Duane has
23 been involved with, either as defendant or plaintiff. Please include the court, case number, nature of
24 the legal action, and the result of the legal action.
25
26
27

1 **ANSWER:** The EEOC objects because the term “legal action” is vague and the request is overbroad
2 because it is unlimited in temporal scope. Additionally, the Interrogatory seeks potentially irrelevant
3 information beyond the scope of discovery permitted by Fed. R. Civ. P. 26(b). Subject to and
4 without waiving these objections, the EEOC identifies the following legal proceedings:

5 NLRB v. IXL Learning, Inc., 20-CA-153625 – NLRB proceeding filed by the NLRB against
6 IXL Learning, Inc. for violations of the National Labor Relations Act. An Administrative Law
7 Judge issued a decision in favor of IXL Learning, Inc.
8

9 Adrian Scott Duane v. IXL Learning, Inc. and Paul Mishkin, No. 3:17-CV-00078-EDL (N.D.
10 Cal.) – Federal civil action brought in the Northern District of California alleging FMLA and state
11 tort law violations. The claims pending in that action were dismissed with prejudice pursuant to a
12 stipulation by the parties on June 27, 2017.

13 **INTERROGATORY NO. 5:** Set forth a detailed calculation of the damages you and Duane
14 claim to have sustained in this case and specify: (a) each element of your total alleged damages,
15 including alleged economic loss (lost past and future income), non-economic loss (emotional), and
16 alleged punitive damages; and (b) the bases for your entitlement to each claimed element of damages
17 including identifying each document pertaining to each item of damage.
18

19 **ANSWER:** The EEOC objects to this Interrogatory on grounds that it is speculative. Subject to
20 and without waiving the objection the EEOC provides the following information:

21 The EEOC does not claim to have sustained damages in this case. The EEOC seeks back pay
22 damages for Mr. Duane for the period of January 8, 2015 through December 31, 2015, at which time
23 Mr. Duane secured comparable employment. Mr. Duane is entitled to past pecuniary losses and
24 back pay, which are not subject to the federal statutory cap. *See* 42 U.S.C. §2000e-5(g); 42 U.S.C. §
25 12117. The EEOC estimates economic damages will include at least the following: (1) an annual
26 salary of \$93,555, which represents one year of compensation at the 2014 rate of \$89,100 and
27

1 assumes a 5% increase for 2015; (2) health insurance costs of at least \$2,340, which represents the
2 amount Mr. Duane paid to continue limited health insurance during his unemployment; and (3)
3 employer match contributions at 50% up to 6% of Mr. Duane's salary to retirement accounts of
4 approximately \$2,339, which assumes a 5% employee contribution for calendar year 2015; and (4)
5 the cost of App Academy software development bootcamp totaling approximately \$18,000.

6 The EEOC also seeks compensatory and punitive damages for Mr. Duane. The EEOC is
7 entitled to recover compensatory and punitive damages on behalf of Mr. Duane pursuant to the Civil
8 Rights Act of 1991 up to the statutory cap of \$200,000. Plaintiff states that Mr. Duane suffered from
9 emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation after
10 Defendant's retaliatory termination that warrants compensatory damages. The EEOC also seeks
11 punitive damages, which are appropriate when an employer acts "with malice or with reckless
12 indifference to the federally protected rights of an aggrieved individual." 42 U.S.C. §1981A(b)(1).
13 Based on evidence currently available, the combination of emotional distress damages and punitive
14 damages will yield at least the statutory cap.
15

16
17 **INTERROGATORY NO. 6:** State whether you and Duane or anyone acting for you or Duane or on
18 your or Duane's behalf obtained statement in any form from any person regarding any of the events
19 concerning the allegations within your Complaint.

20 **ANSWER:** The EEOC objects to this Interrogatory on grounds that the request is overbroad,
21 unlimited in temporal scope, vague and ambiguous. The request is unduly burdensome and seeks
22 information not proportional to the needs of the case. The request does not define or clarify the type
23 of "statement" sought.
24

25 Additionally, the EEOC objects to the extent the Interrogatory seeks information protected
26 by the attorney work product privilege. Plaintiff objects in that the request seeks duplicative
27 information previously provided to Defendant in the documents produced with EEOC's Initial

1 Disclosures. *See* EEOC000052 – EEOC000068. Finally, the request also seeks information already
2 in Defendant’s custody, possession, and control. *See* IXL00001 – IXL0779.

3 **INTERROGATORY NO. 7:** For each witness (including experts) that you intend to call at
4 trial identify the witness and set forth a brief description of the subject matter upon which they are
5 expected to testify. In the case of experts, please include their educational background, experience,
6 or other expertise which will allow them to be qualified as an expert at the time of trial, the factual
7 information and data reviewed by the expert(s), and the opinions which the expert(s) are expected to
8 render.
9

10 **ANSWER:** The EEOC objects to this Interrogatory to the extent that it exceeds the scope of
11 discovery permitted by Fed. R. Civ. P. 26(b)(4). The EEOC also objects to the extent that the
12 request seeks to change this Court’s Scheduling Order specifying the time for expert disclosures.
13 *See* ECF 27. Plaintiff also objects in that the request seeks duplicative information previously
14 provided to Defendant in EEOC’s Initial Disclosures.
15

16 **INTERROGATORY NO. 8:** Identify all compensation, including the source of said
17 compensation, which Duane has received as income for any services he provided since the
18 termination of his employment with IXL. Identify the names and addresses of employers or entities
19 paying him, the reasons for the termination of employment, if any, and any other sources of income,
20 including the amount of such income and the name, address, and telephone of the source of income.
21

22 **ANSWER:** The EEOC objects to the extent that the Interrogatory seeks information that is
23 irrelevant to the claims or defenses of the parties. The EEOC only seeks back pay damages for Mr.
24 Duane from the date of his termination at IXL, January 8, 2015 through December 31, 2015, at
25 which point he secured comparable employment. Mr. Duane’s compensation after the end of his
26 claim for back pay is therefore beyond the scope of discovery. Subject to that objection, the EEOC
27 answers that from January 8, 2015 through December 31, 2015, the only compensation Mr. Duane

1 received was a nominal stipend of \$200 from San Diego Pride during an internship where he
2 provided web development services to increase the organization's website accessibility.

3 **INTERROGATORY NO. 9:** Identify all efforts Duane has made to obtain employment or
4 income during or since the termination of his employment with IXL, including: (a) names,
5 addresses, and telephone numbers of all employers or companies he sought employment or income
6 from; (b) all methods he used to attempt to obtain employment or income, including dates of
7 applications, job searches interviews, etc.; and (c) any reasons why he has not attempted to obtain
8 employment or income.
9

10 **ANSWER:** The EEOC objects to the extent that this Interrogatory seeks information that is
11 irrelevant to the claims or defenses of the parties. Any information regarding any attempts to obtain
12 employment or income after his claim for back pay terminates is beyond the scope of discovery.
13 Subject to the EEOC's objection regarding the relevant period of time for discovery regarding Mr.
14 Duane's job search efforts, the EEOC provides the following information.
15

16 Immediately after his termination Mr. Duane began pursuing multiple employment
17 opportunities through a variety of methods. He accessed his various networks including personal
18 friends and acquaintances, his graduate school network, and his trans/queer network to inquire about
19 and pursue leads for job opportunities in technology. In addition to his networks, Mr. Duane
20 searched for positions within the educational technology field. Mr. Duane primarily used EdSurge, a
21 hub for educational technology postings and news. Through EdSurge, he found postings for
22 companies like Khan Academy, Clever, Desmos, Kizoom, Piazza, Coursera, and Edulastic, many of
23 which he applied to. He also utilized Dice.com to identify potential job opportunities at technology
24 companies like change.org and kiva.org. Occasionally, he also searched for job postings on
25 Glassdoor.com. He diligently continued his job search efforts until he was offered two employment
26 opportunities in December 2015, one of which he ultimately accepted, with a start date of January
27

1 2016.

2 For the first 2-3 months of 2015, Mr. Duane applied for jobs he could find posted online or
3 through acquaintances that were comparable to his position of Product Analyst at IXL. Mr. Duane
4 unsuccessfully interviewed for a Data Analyst position at Caliber Schools in Richmond, CA, a
5 curriculum design position with an ERP Corp recruiter, another curriculum design position at
6 study.com, and a data engineering internship at EdSurge. After several failed attempts at securing
7 employment, Mr. Duane concluded that the skill set developed while at IXL was extremely narrow
8 and that he was not qualified for a broad range of available positions in the technology field.
9

10 In approximately February 2015, Mr. Duane began to take steps to increase his employability
11 within the education technology field and to expand his job search beyond the limited number of
12 educational technology companies. He participated in an eight-week online data science course
13 beginning in January 2015 through Coursera.com, which included topics like statistical analysis,
14 programming in R, and data modeling. He engaged in self-initiated skill building through
15 HackerRank, which provides practice software engineering questions. Mr. Duane also participated
16 in TechSF, a program through Bay Area Video Coalition for people trying to transition into
17 technology jobs. Through TechSF, Mr. Duane received career coaching services and took courses
18 on frontend web development. These skill-building efforts enabled Mr. Duane to obtain the San
19 Diego Pride web development internship. From April – July 2015, Mr. Duane worked as a web
20 development intern for San Diego Pride and honed his web development skills. During this time,
21 Mr. Duane nonetheless continued to research ways to obtain employment in either data science or
22 software development.
23
24

25 After completing the San Diego Pride internship in July 2015, Mr. Duane sought to further
26 develop his software engineering skills. Mr. Duane applied for software engineering boot camps
27 through Devbootcamp and App Academy. Mr. Duane chose to proceed with App Academy, which

1 began with a four-week pre-course that was about 20-30 hours of work each week starting on July
2 20 2015. The full-time bootcamp began August 24, 2015 and lasted 12 weeks. The pre-work was
3 entirely in the scripting language of Ruby, and focused on logical basics, the Rails web framework,
4 and object-oriented design. The full-time program progressed through advanced Ruby techniques to
5 Ruby on Rails, basic database design, frontend development with Javascript, and fullstack
6 development using Rails with React/Flux. Through these programs, Mr. Duane learned a marketable
7 skill set that encompassed Ruby on Rails with some Javascript frontend.
8

9 After finishing the bootcamp program, Mr. Duane again applied for many jobs. In December
10 Wikispaces/TES offered Mr. Duane a full-time software development position. Simultaneously,
11 App Academy offered Mr. Duane the Teaching Assistant position he ultimately accepted. Mr.
12 Duane began his job with App Academy on January 4, 2016. To that end, the EEOC only seeks
13 back pay damages for Mr. Duane from January 9, 2015 through December 31, 2015.
14

15 The EEOC refers Defendant to documents relating to Mr. Duane's job search efforts
16 produced in response to Defendant's Request for Document No. 20.

17 **INTERROGATORY NO. 10:** Identify all forms of employment and employment offers
18 Duane has had since the termination of his employment with IXL, including (a) names, addresses,
19 and telephone numbers of all such employers; and (b) the compensation Duane received or were
20 offered from the employer.

21 **ANSWER:** Subject to the EEOC's object that the Interrogatory partially seeks irrelevant
22 information beyond the scope of discovery, the EEOC provides the following information for the
23 period of January 9, 2015 through December 31, 2015.
24

25 (1) Web development internship for improving website accessibility

26 San Diego Pride

27 Mr. Duane received a \$200 stipend for participating in the internship

1 (2) App Academy Bootcamp

2 (3) Mr. Duane declined an employment offer from WikiSpaces/TES for a full-time software
3 engineer position. The offer included a \$110,000 base salary plus medical benefits.

4 (4) Mr. Duane accepted an employment offer from App Academy for a full-time Teaching
5 Assistant position on December 17, 2015 with an employment start date of January 4, 2015.
6 The job offer included a \$100,000 base salary.

7
8 **INTERROGATORY NO. 11:** Identify all physical, physiological, mental, and/or emotional
9 symptoms Duane allegedly suffered as a result of IXL's actions.

10 **ANSWER:** The EEOC objects to this interrogatory on grounds that it is vague and ambiguous.
11 Subject to, and without waiving these objections, the EEOC states that Mr. Duane suffered from
12 emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation due to
13 Defendant's discriminatory actions against him. Mr. Duane felt humiliated that he was terminated
14 because he opposed what he thought to be discrimination. Mr. Duane was never diagnosed with any
15 "physical, physiological, mental, and/or emotional symptoms as a result of IXL's actions."

16
17 **INTERROGATORY NO. 12:** Provide the name and address of all physicians, health care
18 providers, mental health professional, therapists, or any other medical practitioners who have treated
19 or counseled Duane for mental anguish, depression, anxiety, emotional pain, suffering,
20 inconvenience, loss of enjoyment of life, humiliation, physical and/or physiological symptoms, or
21 any other mental illness or emotional pain or illness before, during, and after his employment with
22 IXL. For each person or entity, provide beginning and ending dates of treatment or counseling.

23
24 **ANSWER:** The EEOC objects to this Interrogatory because it seeks information that is irrelevant
25 to the claims or defenses of the parties and is beyond the scope of discovery. The EEOC's claim for
26 emotional distress damages does not automatically place Mr. Duane's mental state at issue in this
27 litigation. The EEOC also objects on grounds that the request is overbroad in that it seeks

1 information before, during, and after Mr. Duane's employment with IXL. Moreover, the EEOC
2 objects to the extent the request seeks information protected by the doctor-patient or
3 psychotherapist-patient privileges.

4 **INTERROGATORY NO. 13:** Identify all instances in which Duane communicated with
5 anyone at IXL, including IXL's current or former employees, concerning any alleged instances of
6 discriminatory and/or retaliatory conduct. As to each instance, please set forth the date or
7 approximate date of such communication, to whom it was made, and whether it was in oral or
8 written form. If it was in written form, identify any and all documentation relating to each instance.

9 **ANSWER:** The EEOC objects because this Interrogatory seeks information that is unreasonably
10 cumulative or duplicative, can be obtained from some other source that is more convenient, less
11 burdensome, and less expensive. The EEOC also objects in that the request seeks information
12 beyond the scope of the discovery permitted by Fed. R. Civ. P. 26(b) and is not proportional to the
13 needs of the case because Defendant has equal/similar access to relevant information. The EEOC
14 objects to the extent that this request seeks information that is not relevant to any party's claims or
15 defenses. It would be unduly burdensome for the EEOC to search for these communications,
16 without regard to a temporal scope or the materiality of the communications.
17

18
19 Subject to and without waiving these objections, the EEOC directs Defendant to the
20 documents produced in response to Request for Production Nos. 11-13, collected from Mr. Duane's
21 text messages, Facebook account, and personal email accounts.

22 **INTERROGATORY NO. 14:** Identify all instances in which anyone at IXL communicated with
23 Duane concerning any issues related to his work performance and/or work productivity. As to each
24 instance, please set forth the date or approximate date of such communication, who made it, and
25 whether it was in oral or written form. If it was in written form, identify any and all documentation
26 relating to each instance.
27

1 **ANSWER:** The EEOC objects to this Interrogatory on grounds that it is overbroad and beyond
 2 the scope of discovery permitted by Fed. R. Civ. P. 26(b). The request is not proportional to the
 3 needs of the case because Defendant has similar/better access to the relevant information. The
 4 phrase “issues related to his work performance and/or productivity” is vague and ambiguous. The
 5 EEOC object to the extent the request seeks information that is not relevant to any party’s claims or
 6 defenses.

7
 8 Subject to, and without waiving these objections, the EEOC identifies the following instances
 9 where an IXL employee communicated with Duane issues related to his work performance and/or
 10 work productivity.

- 11 - Performance evaluation dated September 12, 2013 (IXL0643)
- 12 - Performance evaluation dated November 6, 2013 (IXL0073)
- 13 - Performance evaluation on or about January 2014
- 14 - October 2014 – conversation between Mr. Duane and David Keyes about Mr. Duane’s
 15 productivity on days when Mr. Duane had medical appointments. This conversation led to
 16 Mr. Duane taking a half-day of sick leave on days when he had medical appointments.
- 17 - December 2014 email communications between Scott Duane, David Keyes, and Maricela
 18 Prado.

19
 20 **INTERROGATORY NO. 15:** Identify all instances in which Duane communicated with
 21 anyone at IXL concerning any of the issues raised in your Complaint. As to each instance, please set
 22 forth the date or approximate date of such communication, to whom it was made, and whether it was
 23 in oral or written form. If it was in written form, identify any and all documentation relating to each
 24 instance.
 25

26 **ANSWER:** The EEOC objects to this Interrogatory on grounds that it is vague, ambiguous,
 27 overbroad, and beyond the scope of discovery permitted by Fed. R. Civ. P. 26(b). The request lacks

1 a temporal scope and the phrase “issues raised in your Complaint” is vague. The EEOC objects to
2 the extent the request seeks information that is not relevant to any party’s claims or defenses. EEOC
3 also objects because this Interrogatory seeks information that is unreasonably cumulative or
4 duplicative, can be obtained from some other source that is more convenient, less burdensome, and
5 less expensive. Communication between IXL and Duane during Duane’s employment is in
6 Defendant’s possession, custody, and control.

7
8 Subject to and without waiving these objections, the EEOC identifies the following instances
9 where Mr. Duane communicated with IXL issues raised in the Complaint.

- 10 - In approximately July or August 2013 – Conversations with Nemo Curiel regarding the lack
11 of diversity in the workplace.
- 12 - In approximately July or August 2013 – Conversations with Nemo Curiel regarding
13 inappropriate comments and questions by HR managers regarding Mr. Duane’s sexual
14 orientation and/or gender identity.
- 15 - In approximately July or August 2013 – Inappropriate comments or questions by Karen
16 Penner and Maricelo Prado regarding Mr. Duane’s sexual orientation and/or gender identity.
- 17 - July 2013 – Maricelo Prado skipping information about disability benefits during a new
18 employee training because she was talking to “young, healthy guys.”
- 19 - Throughout his employment, Mr. Duane had multiple conversations with Nemo Curiel, Jess
20 Morse, and Nina Wu regarding inappropriate comments by co-workers and HR managers.
- 21 - December 2014 email exchange between Maricelo Prado, David Keyes and Mr. Duane.
- 22 - December 30, 2014 – Mr. Duane’s post on Glassdoor.com.
- 23 - January 6, 2015 meeting where Mr. Duane raised concerns of discrimination directly with
24 David Keyes.
- 25 - January 8, 2015 meeting where Mr. Duane raised concerns of discrimination directly with
26
27

1 Paul Mishkin.

2 **INTERROGATORY NO. 16:** Identify all instances in which Duane communicated with
3 anyone at IXL concerning any request for an accommodation associated with any disability. As to
4 each such instance, please set forth the date or approximate date of such communication, to whom it
5 was made, whether it was in oral or written form, and the response to the request. If it was in written
6 form, identify any and all documentation relating to each instance.

7 **ANSWER:** The EEOC objects to this Interrogatory on grounds that it is vague, overbroad and
8 seeks information that is unreasonably cumulative or duplicative, can be obtained from some other
9 source that is more convenient, less burdensome, and less expensive. Moreover, the request is an
10 undue burden for the EEOC since any request for an accommodation associated with any disability
11 should be in Defendant's possession, custody, and control.
12

13 Subject to and without waiving these objections, the EEOC identifies the following instances
14 of requests for accommodation.

- 15
- 16 - January 2014 – Mr. Duane requested Mr. Keyes' permission to take one week of leave in
17 February for a surgery.
 - 18 - July 2014 – Mr. Duane sought approval from Mr. Keyes for a larger leave of absence in
19 November for another surgery.
 - 20 - September 2014 – request for an ergonomic mouse and keyboard.
 - 21 - December 2014 – Mr. Duane advocated with Mr. Keyes to get permission to return to work
22 with a 50% telework accommodation.
23

24 **INTERROGATORY NO. 17:** Please set forth the basis for your statement that Duane
25 discussed "the culture at IXL being unwelcoming to employees who are not White or Asian
26 American, who are not able-bodied, and who do not fit into neat categories of gender identity,
27 orientation, and expression" as alleged in Paragraph 16 of your Complaint.

1 **ANSWER:** The EEOC objects to this Interrogatory on grounds that it is a premature contention
2 interrogatory that can be better answered after the parties engage in additional deposition discovery.
3 Subject to and without waiving this objection, the EEOC states that throughout his employment at
4 IXL, Mr. Duane discussed with co-workers with whom he had a friendly relationship his concerns
5 and observations about the company's lack of diversity, concerns about IXL disseminating
6 dismissive or inaccurate information regarding disability leave, and inappropriate questions
7 regarding his own sexual orientation and gender identity.
8

9 **INTERROGATORY NO. 18:** Please set forth the basis for your statement that "employees probed
10 Duane with inappropriate questions about his gender identity and orientation" alleged in Paragraph
11 17 of your Complaint.

12 **ANSWER:** The EEOC objects to this Interrogatory on grounds that it is a premature contention
13 interrogatory that can be better answered after the parties engage in additional deposition discovery.
14 Subject to and without waiving this objection, the EEOC states that throughout his employment
15 employees asked Duane invasive and probing questions about his sexual orientation and about some
16 of the marks and scars on his body resulting from surgeries.
17

18 **INTERROGATORY NO. 19:** Identify all instances in which Duane communicated with
19 anyone at IXL related to any of his concerns about experiencing discrimination in the workplace. As
20 to each such instance, please set forth the date or approximate date of such communication, to whom
21 it was made, whether it was in oral or written form, and the response to the request. If it was in
22 written form, identify any and all documentation relating to each instance.
23

24 **ANSWER:** The EEOC objects on grounds that this request is overbroad, has no temporal scope, is
25 duplicative of discovery previously produced. The EEOC refers Defendant to the responses in
26 Interrogatory Nos. 15-18.
27

1 **INTERROGATORY NO. 20:** Please set forth the basis for your statement that Duane
2 suffered “humiliation, emotional distress, and loss of enjoyment of life” as alleged in Paragraph 39
3 of your Complaint.

4 **ANSWER:** The EEOC objects to this Interrogatory on grounds that it is a premature contention
5 interrogatory that can be better answered after the parties engage in additional deposition discovery.
6 Subject to and without waiving this objection, the EEOC states that Mr. Duane felt humiliated when
7 he was terminated for opposing what he reasonably believed to be discriminatory behavior. The
8 termination and subsequent one-year unemployment affected his relationships, his confidence level
9 in obtaining and keeping new employment, and significantly disrupted his financial security.

11 **INTERROGATORY NO. 21:** Please set forth the basis for your statement that IXL’s actions
12 were “intentional, willful, malicious, and/or done with reckless disregard for Duane’s federally
13 protected rights” alleged in Paragraph 41 of your Complaint.

14 **ANSWER:** The EEOC objects to this Interrogatory on grounds that it is a premature contention
15 interrogatory that can be better answered after the parties engage in additional deposition discovery.
16 Subject to and without waiving this objection, the EEOC states that the CEO fired Duane knowing
17 that Duane, a gender non-conforming employee recently returning from disability leave, complained
18 about discrimination. Mishkin had knowledge of the anti-discrimination laws and of Duane’s
19 complaints, as demonstrated by an email to Duane stating that discrimination of any type was
20 unacceptable to IXL. Nonetheless, Defendant fired Duane after learning that Duane publicly
21 accused IXL of discriminatory favoritism and expressed that managers lacked an understanding
22 about the meaning of discrimination. Mishkin demonstrated reckless indifference to Duane’s
23 federally protected rights with his decision to fire Duane based on his opposition to discrimination.
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VERIFICATION

I, Ami Sanghvi, state the following:

1. I am a trial attorney on the staff of EEOC.
2. Relying on information obtained from Mr. Duane, the pre-litigation investigative file, publicly available information, witness interviews, and Mr. Duane’s relevant electronically stored information, I prepared Plaintiff’s January 29, 2018 Objections and Responses to Defendant’s First Set of Interrogatories.
3. To the best of my knowledge, information, and belief, I certify that these answers are true and correct.

Dated: January 29, 2018

/s/ Ami Sanghvi

AMI SANGHVI

Respectfully Submitted,

/s/ Ami Sanghvi

AMI SANGHVI

Senior Trial Attorney

Equal Employment Opportunity Commission

450 Golden Gate Avenue, 5th Floor W., POB 36025

San Francisco, CA 94102

CERTIFICATE OF SERVICE

I hereby certify that I am serving EEOC’s Responses and Objections to Defendant’s First Set of Interrogatories on January 29, 2018 to Defendant, IXL Learning, Inc. by electronic mail to the following attorneys of record:

Jeffrey Wilson
wilson@youngbasile.com

Natasha Menezes
menezes@youngbasile.com

DATED: January 29, 2018

BY: /s/ Ami Sanghvi
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June 27, 2018

Natasha Menezes
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Natasha,

I am writing to follow-up on our discussions regarding Defendant's affirmative defenses. Prior to moving for summary judgment, I would like to ensure that each side is not expending unnecessary resources on abandoned issues. Also, to ensure there is no miscommunication, I want to memorialize some of our email agreements and offer some proposals.

I. Stipulations thus far:

- a. Defendant admits that the EEOC has met all conditions precedent prior to instituting this suit.
- b. Defendant admits that the EEOC is not preempted by the NLRA and therefore withdraws Affirmative Defense No. 6 from its Answer to the EEOC's Complaint. (ECF No. 12)

II. Plaintiff-Intervenor's Proposed Stipulation

- a. Plaintiff-Intervenor Scott Duane withdraws the assertion that the retaliation was because of his report of discrimination to his manager David Keyes, and rather only retains the claim that the retaliation was because of the Glassdoor.com post.

III. Defenses that warrant dismissal.

a. Plaintiff-Intervenor's Conditions Precedent.

Duane took the necessary procedural steps prior to asserting both federal and state law claims. *See* 42 U.S.C. §2000e-5. Similarly, in the Intervenor Complaint, Duane pled performance of these conditions precedent. *See* Fed. R. Civ. P. 9(c) (permitting general pleading as to performance of these conditions precedent); *see also EEOC v. Wah Chang Albany Corp.*, 8 FEP Cases 203 (9th Cir. 1974) (holding it was sufficient for plaintiff in a Title VII civil action to generally allege compliance with the administrative pre-requisites). Duane not only pled that the

conditions precedent had been met, but he also specifically pled that he exhausted all of his administrative remedies, timely filed his charge of discrimination with both the California Department of Fair Employment and Housing (DFEH) and the EEOC, and received notice of the EEOC's failure to achieve voluntary conciliation. *See* ECF No. 41 at ¶¶ 6, 7, 9, 10. IXL cannot attack Duane's pleadings and cannot point to any evidence to contradict the assertion that Duane exhausted his administrative remedies prior to asserting both federal and state law claims in this action.

Defendant, however, improperly denied, without specificity, that conditions precedent had been met. *See* Fed. R. Civ. P 9(c) (requiring particularity when denying that a condition precedent has occurred or been met). Moreover, Defendant cannot point to any evidence in the record that contradicts a finding that Duane met his conditions precedent. IXL should withdraw this defense as to Duane.

b. Failure to state a claim upon which relief can be granted (Affirmative Defense No. 1 for both the EEOC and Duane)

To the extent that this is a Rule 12(b)(6) pleading challenge, the time to assert such a challenge has passed. *See EEOC v. NCL America, Inc., et. al.*, 536 F. Supp. 2d 1216, 1224 (D. Haw. 2008). Discovery ended on April 13, 2018 and Defendant did not move to dismiss either Plaintiff or Plaintiff-Intervenor's Complaints. The Complaints allege sufficient factual allegations that provide fair notice and enable IXL to defend itself. Moreover, IXL has not raised any new facts that challenge the sufficiency of the EEOC or Duane's pleadings. To the extent that this defense is a Rule 12(b)(6) pleading challenge, it should be withdrawn. To the extent that this defense is something other than a pleading challenge, please explain the defense or provide authority for it so that the parties can meet and confer to assess whether we continue to believe dismissal is warranted.

c. Laches (Affirmative Defense No. 3 for both the EEOC and Duane; Affirmative Defense No. 5 for the EEOC and Affirmative Defense No. 6 for Duane)¹

To establish a laches defense, IXL must show that (1) there was inexcusable delay in the assertion of a known right *and* (2) the party asserting laches has been prejudiced. *See O'Donnell v. Venor Inc.*, 466 F.3d 1104, 1112 (9th Cir. 2006) (emphasis added). Defendant cannot meet either standard. First, neither the EEOC nor Duane inexcusably delayed in asserting federal or state law retaliation claims. IXL received notice of Duane's timely filed charge in May 2015, five months after IXL terminated Duane. The EEOC issued, in April 2016, a Letter of Determination finding reasonable cause to believe that IXL violated the retaliation provisions Title VII and the ADA. In July 2016, the EEOC issued notice that conciliation efforts had failed. The EEOC filed this instant action in May 2017. Two years between charge filing and initiation of the lawsuit does not constitute inexcusable delay. The main decisionmakers related to IXL's decision to terminate Duane are still available, including many who have been deposed. Duane's

¹ IXL also included "laches" in its Affirmative Defense No. 5 against the EEOC and Affirmative Defense No. 6 against Duane. We are assuming this was a drafting error and we ask that IXL withdraw both references to the laches defense.

managers, Kate Mattison and David Keyes were deposed and remain IXL employees. Obviously, Paul Mishkin, the CEO and ultimate decisionmaker, is also still integrally involved in the company, was deposed, and remains available to testify at trial. Defendant cannot cite to any prejudice. Similarly, as Defendant readily admits, Duane has been actively pursuing his rights since his termination in various forums. While Duane's vigorous advocacy may be an inconvenience to Defendant, it is not evidence of inexcusable delay. IXL should withdraw this defense against the EEOC and Duane.

d. Failure to Mitigate (Affirmative Defense No. 4 for both the EEOC and Duane)

It is IXL's burden to prove based on undisputed facts in the record both that "there were substantially equivalent jobs available which [Duane] could have obtained *and* that [he] failed to use reasonable diligence in seeking one." *EEOC v. Farmer Bros. Co.*, 31 F.3d 891, 906 (9th Cir. 1994) (emphasis in original); *EEOC v. Red Robin*, 2005 WL 2090677 at *5 (refusing to eliminate employer's burden of satisfying both prongs of the test). Defendant cannot satisfy either of these elements.

First, the EEOC and Duane are seeking lost wages and pecuniary damages during the approximately one year that Mr. Duane was unemployed. Defendant has not identified a single position that Mr. Duane could have held during that period. In response to discovery requests, IXL has only indicated that Duane's claim that he was unable to find employment is not credible given his advanced degree and the job market in Northern California. Yet, Defendant provided no further facts regarding the Northern California job market to substantiate that assertion. Second, any attempt to rely on the jobs that Mr. Duane *did* apply for as evidence of available positions, will necessarily defeat the defense. Duane's application for those positions and his inability to secure an offer necessarily contradicts any argument that Duane failed to use reasonable diligence in seeking one of those positions. As a result, there are simply no facts in the record that allow IXL to sustain its burden for this defense. Therefore, the EEOC and Duane request that Defendant withdraw this defense.

e. Statute of Limitations (Affirmative Defense No. 5 for Duane)

To the extent that IXL seeks to relitigate the issue of whether Duane's state law claims are barred by the statute of limitation, Defendant should consider that nothing in the record supports such a finding. As previously briefed, Duane's one-year statute of limitation applicable to his FEHA claim remains tolled because the requirements of §12965(d) have been met: (1) a charge of discrimination was timely filed concurrently with the EEOC and the DFEH; (2) the investigation of the charge was deferred by the DFEH to the EEOC; (3) DFEH issued a right to sue letter to the Duane upon deferral of the charge to the EEOC; and (4) the time for commencing the state law claims expires when the federal right to sue period to commence a civil action expires, or one year from the date of DFEH's right to sue letter, *whichever is later*. Cal. Govt. Code § 12965(d)(2). Because the EEOC does not issue a right to sue notice when it files suit, Duane's federal right to sue period to commence a civil action had not expired by the time he filed his motion to intervene and later the Intervenor Complaint. This Court also noted that the argument that the state law claim is time-barred is weak. (ECF No. 40 at 5.) Nothing in

the record has changed with respect to the statute of limitations and therefore IXL should withdraw this defense.

f. Waiver (Affirmative Defense No. 5 for the EEOC and Affirmative Defense No. 6 for Duane)

Neither the EEOC nor Duane have waived the ability to pursue federal retaliation claims under Title VII and the ADA. To establish a waiver defense, IXL must show that either the EEOC or Duane engaged in conduct that constituted “intentional relinquishment of a known right after knowledge of the fact.” *United States v. Perez*, 116 F.3d 840, 845 (9th Cir. 1997). Defendant cannot specify facts to support its waiver defense. *See e.g., EEOC v. Global Horizons, Inc.*, 11-cv-00257 LEK, 2014 U.S. Dist. LEXIS 26342, *24-25 (D. Haw. Feb. 28, 2014) (finding that waiver is a fact-specific equitable defense). Nothing in the record demonstrates that either the EEOC or Duane intentionally relinquished a right to file suit against IXL alleging violations of retaliation provisions of Title VII and the ADA. In fact, IXL admits that it does not seek to preclude the EEOC’s assertion of the federal claims nor does it seek to preclude Duane’s intervention as of right. When asked for the facts supporting IXL’s contentions that the EEOC’s claims for damages are barred by the doctrine of waiver, IXL only referred to the timing and circumstances of *Duane’s* assertion of his intervenor claims. Defendant provided no facts supporting this defense with regards to the EEOC.

Similarly, Defendant cannot sustain its burden by arguing that Duane waived his state law claims by dismissing his FMLA and tort action with prejudice. A waiver of claims for violations of civil rights must be express, voluntary, deliberate and informed. *Nelson v. Cyprus Bagdad Copper Corp.*, 119 F.3d 756, 762 (9th Cir. 1997). Defendant agreed to Duane’s intervention in the EEOC action when dismissing the previously filed FMLA action. The parties however did not have a clear understanding of whether that dismissal and the concurrent agreement to the intervention constituted a waiver of the state law claims. There are no additional facts that Defendant can point to that suggest an express, voluntary, deliberate and informed waiver of his state law claims. As a result, the EEOC and Duane request that IXL withdraw this defense as to both the EEOC and Duane.

g. Estoppel (Affirmative Defense No. 5 for the EEOC and Affirmative Defense No. 6 for Duane)

To establish that IXL cannot be held liable for the retaliatory discharge under an estoppel defense, IXL must show that it justifiably relied to its detriment on either the EEOC or Duane’s misconduct. *See Carrillo v. United States*, 5 F.3d 1302, 1306 (9th Cir. 1993) (“An essential element of any estoppel claim is that the party asserting the estoppel must rely to its detriment on the misrepresentation or concealment.”) IXL cannot point to any misrepresentation or concealment by either Duane or the EEOC. Despite IXL’s argument that Duane misrepresented himself or his experience in his Glassdoor.com post, IXL did not rely on these “misrepresentations” to its detriment when firing Duane. Rather, they fired him *because of* the alleged misrepresentations. There was no detrimental reliance. Similarly, IXL cannot point to any misconduct by the EEOC, since the EEOC was not even involved until after the charge was filed. Moreover, to succeed in a claim of estoppel against the EEOC, IXL must establish

affirmative misrepresentation or affirmative concealment of a material fact by the EEOC. *Id.* (citing *Watkins v. United State Army*, 875 F.2d 699, 707 (9th Cir. 1989) (en banc), *cert. denied*, 498 U.S. 957 (1990)). No such facts exist. The EEOC and Duane request that IXL withdraw this defense against both the EEOC and Duane.

h. Res Judicata/Issue Preclusion/Claim Preclusion (Affirmative Defense No. 5 for the EEOC and Affirmative Defense No. 6 for Duane)

The EEOC and Duane request that IXL withdraw this defense as to the federal claims brought by the EEOC and Duane. Duane recognizes that because the Court left open the issues of res judicata and preclusion with respect to the FEHA claims, IXL will likely re-litigate the issues.

In its Answer, IXL pled affirmative defenses that contradict representations made to the Court. Jeff Wilson conceded that res judicata does not apply to the EEOC and Duane's federal law claims. Wilson stated: (1) "I have never made any res judicata (sic) as to the EEOC bringing these claims"; and (2) "[t]o the extent there's a res judicata argument as to Duane's intervention as a co-plaintiff on the existing claims that are asserted by the EEOC, then I waive that." (Tr. Oral Arg. Mtn Intervene, ECF No. 35, 32:5-6; 33:9-11) This Court then recognized that "[b]y agreeing to Duane's intervention, IXL was agreeing that Duane could engage in 'claim-splitting,' and that a res judicata defense would not apply to Duane's participation as a party in the EEOC's lawsuit." (Order Granting Motion to Intervene, ECF No. 40) Thus, there are no remaining grounds enabling IXL to persist in asserting res judicata, claim preclusion, and issue preclusion against the EEOC or against Duane's federal claims. IXL should withdraw this defense as to the federal law claims.

i. NLRA Preemption of Duane's Claims (Affirmative Defense No. 7 for Duane)

The only preemption argument that IXL can assert is that the NLRA preempts Duane from asserting a FEHA claim because it is "arguably either protected or prohibited" by the NLRA. *See San Diego Building Trades Council Local 2620 v. Garmon*, 359 U.S. 236 (1959). However, Duane's FEHA claims are not protected or prohibited by the NLRA. The issue here – retaliatory discharge because of Duane's Glassdoor.com post – is not prohibited by or protected by §7 or § 8 of the NLRA. Here, Duane is not claiming that he was engaged in *concerted* activity. Rather, Duane is claiming that his Glassdoor.com post constituted protected activity and that his termination for that activity was in violation of the FEHA retaliation provision. Duane is not asserting that his behavior was conducted in concert with other or for the purposes of "mutual aid or protection." The statutory provision at issue here provides for an individual cause of action for retaliatory discharge and is based on allegations that IXL engaged in wrongful conduct against Duane as an individual for opposing what Duane reasonably believed to be discrimination at IXL. *See Lombardi v. Copper Canyon Acad. LLC.*, 09-CV-8146-PCT-PGR, 2010 U.S. Dist. LEXIS 100196 (D. Ariz. Sept. 21, 2010). It is a completely different legal standard implicating a different right, and thus not preempted.

IXL has already unsuccessfully argued preemption by claiming that the NLRA preempted Duane's claim under California Labor Code § 232.5. In response Judge Alsup ruled

that the NLRA did not preempt Duane's previously filed state law claim. *See Duane v. IXL Learning, Inc.*, No. C 17-00078 WHA, 2017 U.S. Dist. LEXIS 72993, *10 (N.D. Cal. May 12, 2017). The same analysis applies here and IXL should withdraw its preemption defense against Duane's FEHA claim.

Even, *assuming arguendo*, there was a case for preemption, the National Labor Relations Board has already adopted an Administrative Law Judge's determination that Duane's actions did not amount to protected concerted activity under the NLRA. Therefore, this Court is now free to entertain the FEHA litigation. *See Int'l Longshoremen's Ass'n. v. Davis*, 476 U.S. 380, 397 (1986) ("if there is [preemption], it must defer to the [NLRB], and only if the Board decides that the conduct is not protected or prohibited may the court entertain the litigation").

Finally, just as IXL did not and could not argue that the NLRA preempted the FMLA claim in the previous action, the NLRA does not preempt Duane's pursuit of his Title VII and ADA claims. *See Smith v. Nat'l Steel & Shipbuilding Co.*, 125 F.3d 751, 756 (9th Cir. 1997) ("where the 'conflict' is between two federal statutes, *Garmon* preemption is inapplicable and a federal court may properly retain jurisdiction over non-NLRA federal claims."). IXL should at the very least withdraw the preemption defense as to his federal claims.

IV. Proposed Stipulations

- a.** IXL admits that Scott Duane met all conditions precedent prior to instituting his federal and state law claims in this action.
- b.** IXL withdraws its defense that the EEOC failed to state a claim upon which relief could be granted.
- c.** IXL withdraws its defense that Plaintiff-Intervenor failed to state a claim upon which relief could be granted.
- d.** IXL withdraws its defense that the EEOC or Plaintiff-Intervenor has unreasonably delayed in pursuing a right of claim as well as the defense of laches.
- e.** IXL withdraws its defense that Plaintiff-Intervenor's federal and state law claims are barred by the statute of limitations.
 - i.** Alternatively: IXL withdraws its defense that Plaintiff-Intervenor's federal law claims are barred by the statute of limitations.
- f.** IXL withdraws its waiver defense against the EEOC and Plaintiff-Intervenor.
 - i.** Alternatively: IXL withdraws its defense that the EEOC and Plaintiff-Intervenor waived the ability to pursue federal retaliation claims under Title VII and the ADA.
- g.** IXL withdraws its estoppel defense against the EEOC and Plaintiff-Intervenor.
 - i.** Alternatively: IXL withdraws its defense that the EEOC and Plaintiff-Intervenor are estopped from pursuing federal retaliation claims under Title VII and the ADA.
- h.** IXL withdraws its defense that Plaintiff-Intervenor failed to mitigate his damages.
- i.** IXL withdraws its defense that the EEOC and Plaintiff-Intervenor are barred from relief by the doctrines of res judicata, issue preclusion, and/or claim preclusion.
 - i.** Alternatively: IXL withdraws its defense that the doctrines of res judicata, issue preclusion, and/or claim preclusion bar the EEOC and Plaintiff-

Intervenor's right to relief under Title VII and the ADA retaliation provisions.

- j. IXL withdraws its defense that the National Labor Relations Act preempts Plaintiff-Intervenor's retaliation claims.
 - i. Alternatively: IXL withdraws its defense that the National Labor Relations Act preempts Plaintiff-Intervenor's Title VII and ADA retaliation claims.

I am willing to meet and confer further on these points or discuss the language of the proposed stipulations to the extent that it will assist the parties in reaching a streamlined set of issues to present to the Court on summary judgment. I look forward to a response by 7/6/2018.

Sincerely,

Ami Sanghvi

AMI SANGHVI

From: AMI SANGHVI
Sent: Wednesday, July 11, 2018 4:12 PM
To: 'Natasha Menezes'
Cc: Jeffrey D. Wilson; Leah E. Plotkin; Hind Samona; MARCIA MITCHELL; David Marek (david@marekfirm.com); COLLEEN MCCARTNEY
Subject: RE: Meet & Confer

Natasha,

The one additional factual theory that Duane asserted beyond the EEOC's factual assertions was the assertion that retaliation was based on his discrimination to his manager, David Keyes. Duane was entitled to explore that theory during discovery. Having now done so, Duane, as indicated in my letter and without a request from IXL, withdraws that factual assertion. To clarify your question, IXL's assumption is accurate: Duane's withdrawal of that particular factual assertion applies to both his federal and state law claims.

Prior to sending my letter, and again in response to your email, Duane has reassessed the viability of his state law claims. While I do not disagree that it is possible that the Court precludes Duane from asserting his state law claims, there is also the possibility that the Court rules that IXL did not properly develop record for such a finding. As a result, it currently remains an issue that should go before the Court.

The defenses I identified for possible withdrawal are those for which discovery did not yield factual support. As a result, I wanted to clarify whether IXL continues to assert those defenses. If your response is that there is factual support for those defenses, then I look forward to reading the opposition papers. I just wanted to avoid a scenario where we affirmatively move for SJ on an affirmative defense that Defendant plans on abandoning. I do not think this Court appreciates that type of inefficiency. That is simply what I meant in terms of a streamlined set of issues for the Court.

Based on this exchange, am I correct to understand that because Duane will not withdraw his state law claims, IXL will not withdraw other defenses raised against either or both the EEOC and Duane? If, however, based on my clarification about the withdrawn factual assertion, IXL wishes to withdraw some affirmative defenses or engage in a meet and confer, please let me know.

Thank you,
Ami

From: Natasha Menezes [mailto:menezes@youngbasile.com]
Sent: Friday, July 06, 2018 12:36 PM
To: AMI SANGHVI <AMI.SANGHVI@EEOC.GOV>
Cc: Jeffrey D. Wilson <wilson@youngbasile.com>; Leah E. Plotkin <plotkin@youngbasile.com>; Hind Samona <samona@youngbasile.com>; MARCIA MITCHELL <MARCIA.MITCHELL@EEOC.GOV>; David Marek (david@marekfirm.com) <david@marekfirm.com>; COLLEEN MCCARTNEY <COLLEEN.MCCARTNEY@EEOC.GOV>
Subject: RE: Meet & Confer

Ami,

We have reviewed the letter. The Court held, in its Order Granting Motion to Intervene (ECF No. 40), that Duane will likely be precluded from asserting his state law claim and any factual theories not asserted by the EEOC. Thus, if the parties genuinely want to meet and confer in good faith about actually narrowing the issues for summary judgment and

not expending unnecessary resources, IXL requests that Duane withdraw his state law claim and any factual theories not asserted by the EEOC. It is our understanding that Duane has proposed to withdraw the assertion that retaliation was based on his report of discrimination to his manager David Keyes. It is not clear, and IXL does not want to assume, whether this withdrawal would apply to all of his claims.

In good faith, IXL already agreed to a few stipulations without requesting any stipulations from the EEOC or Duane. If the EEOC is now requesting that IXL withdraw the majority of its affirmative defenses in order to reach a "streamlined set of issues to present to the Court," then the EEOC and Duane should also be willing to comply with their own request. IXL is willing to reassess its affirmative defenses if Duane is willing, in good faith, to do the same in light of the Court's Order.

We are in the process of finalizing the document reproduction, which will be ready early next week. Before we send out our reproduction, I'll send an email that addresses your requests on the reproduction and our corresponding capabilities.

Thanks,
Natasha

From: AMI SANGHVI <AMI.SANGHVI@EEOC.GOV>
Sent: Wednesday, June 27, 2018 2:25 AM
To: Natasha Menezes <menezes@youngbasile.com>
Cc: Jeffrey D. Wilson <wilson@youngbasile.com>; Leah E. Plotkin <plotkin@youngbasile.com>; Hind Samona <samona@youngbasile.com>; MARCIA MITCHELL <MARCIA.MITCHELL@EEOC.GOV>; David Marek (david@marekfirm.com) <david@marekfirm.com>; COLLEEN MCCARTNEY <COLLEEN.MCCARTNEY@EEOC.GOV>
Subject: RE: Meet & Confer

Natasha,

Thank you for your email below. Please see the attached letter regarding IXL's affirmative defenses. In an effort to ensure that neither party engages in an inefficient use of judicial resources or one another's resources, I wanted to be clear about the affirmative defenses IXL intends on pursuing. While I appreciate the stipulations that IXL has made thus far, I want to ensure we are on the same page and outline some of the arguments for why I believe additional stipulations are warranted. Please see attached and I look forward to your response.

Ami

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

and

CASE NO. 3:17-cv-02979-VC

ADRIAN SCOTT DUANE,

Plaintiff-Intervenor,

vs.

IXL LEARNING, INC.,

Defendant.

DEPOSITION OF PAUL MISHKIN

Taken before DIANA L. GONZALEZ

CSR No. 7935

March 7, 2018

1 Q. What documents would help you to -- help to
2 refresh your recollection?

3 A. I suppose there are corporate filings about
4 this.

5 Q. Just to help me understand, if you turn to
6 Exhibit 53 at about eight pages in at IXL-1401, there's
7 a slide about 2007.

8 Does that refresh your recollection as to when
9 the name changed to IXL?

10 A. No.

11 Q. In 2007 when the third product of IXL Math was
12 released, what were the first two products?

13 A. So the first product was called Quia
14 originally, and then we changed the name to Quia Web,
15 and that's the product I just described. The second
16 product was called Quia Books.

17 Q. And then in approximately 2007, you released
18 the third product IXL math; is that correct?

19 A. That's right.

20 Q. Are those the only three products that IXL
21 Learning offers currently?

22 A. No.

23 Q. What are the other products?

24 A. Well, we have a website called
25 HomeschoolMath.net that we acquired. We also have a

1 couple minor websites.

2 Q. And those websites are separate from IXL
3 Learning or somehow related?

4 A. IXL Learning is the company name, so they're
5 part of the company, but they're not part of IXL the
6 product.

7 Q. Can you explain that distinction to me a little
8 bit more. When you say they're not part of IXL the
9 product, what does that mean?

10 A. IXL is one product that our company offers. So
11 the Quia Web, Quia Books, HomeschoolMath.net, those are
12 other products or services that we offer.

13 Q. So when we're talking about IXL the product,
14 what does that entail?

15 A. That is our product for preschool through 12th
16 grade math, English language arts, science, social
17 studies and Spanish.

18 Q. And these other subject areas -- I see that
19 math came about in 2007. These other subject areas that
20 you just outlined, English language arts, when did that
21 begin?

22 A. So language arts was released in 2013. Science
23 and social studies, I don't remember the year. More
24 recently than that, though. And Spanish was within the
25 past year.

1 REPORTER'S CERTIFICATE

2

3

4 I, DIANA L. GONZALEZ, a Shorthand Reporter,
5 State of California, do hereby certify:

6 That PAUL MISHKIN, in the foregoing deposition
7 named, was present and by me sworn as a witness in the
8 above-entitled action at the time and place therein
9 specified;

10 That said deposition was taken before me at said
11 time and place, and was taken down in shorthand by me, a
12 Certified Shorthand Reporter of the State of California,
13 and was thereafter transcribed into typewriting, and
14 that the foregoing transcript constitutes a full, true
15 and correct report of said deposition and of the
16 proceedings that took place;

17 That before completion of the proceedings,
18 review of the transcript was requested.

19 IN WITNESS WHEREOF, I have hereunder subscribed
20 my hand this 14th day of March 2018.

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DIANA L. GONZALEZ, CSR NO. 7935
State of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

and

CASE NO. 3:17-cv-02979-VC

ADRIAN SCOTT DUANE,

Plaintiff-Intervenor,

vs.

IXL LEARNING, INC.,

Defendant.

_____ /

DEPOSITION OF DAVID KEYES

Taken before DIANA L. GONZALEZ

CSR No. 7935

March 5, 2018

1 A. That's right.

2 Q. Moving from product analyst to senior product
3 analyst, is that considered a promotion?

4 A. Yes.

5 Q. Let's go through the job responsibilities when
6 you were a product analyst.

7 A. Okay.

8 Q. What -- describe the job for me, some of the
9 main components of it?

10 A. We write documents that go to engineering. The
11 engineers write code based on those documents, and that
12 code produces the questions on the site that students
13 practice. So the text of those questions, how they
14 answer the question, what diagrams they're given, all
15 that, that's on us to specify. And then when they get
16 a question wrong, the explanations they see are also on
17 us.

18 Q. So in this case, there's a lot of reference to
19 specs. Is that essentially what you're referring to?

20 A. Yes. Yeah.

21 Q. Then when you became a senior product analyst,
22 how did the role change?

23 A. At that point I started managing a couple of
24 product analysts, Scott and Richard. Richard Cudney
25 and Isidora Milin.

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REPORTER'S CERTIFICATE

I, DIANA L. GONZALEZ, a Shorthand Reporter,
State of California, do hereby certify:

That DAVID KEYES, in the foregoing deposition
named, was present and by me sworn as a witness in the
above-entitled action at the time and place therein
specified;

That said deposition was taken before me at
said time and place, and was taken down in shorthand by
me, a Certified Shorthand Reporter of the State of
California, and was thereafter transcribed into
typewriting, and that the foregoing transcript
constitutes a full, true and correct report of said
deposition and of the proceedings that took place;

That before completion of the proceedings,
review of the transcript was requested.

IN WITNESS WHEREOF, I have hereunder subscribed
my hand this 12th day of March 2018.

DIANA L. GONZALEZ, CSR NO. 7935
State of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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U.S. EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	Case No. 3:17-cv-02979-VC
and)	
)	
ADRIAN SCOTT DUANE,)	
)	
Plaintiff-Intervenor,)	
)	
v.)	
IXL LEARNING, INC.,)	
)	
Defendant.)	
_____)	

DEPOSITION OF
ADRIAN SCOTT CAMPE DUANE

March 27, 2018

10:05 a.m.

44 Montgomery Street, Suite 1100

San Francisco, California

Sarah J. Bingham, CSR #13720

1 Q. So in your post you said you -- your advice to
2 management, I should say, was "Listen to the ideas of a
3 group of smart, talented employees, or micromanage a group
4 of mediocre employees." Do you remember writing that?

5 A. Yes.

6 Q. My question to you is do you consider yourself in
7 one of those two groups?

8 A. Well, I consider myself to be pretty smart
9 and -- and creative, and I think I bring those qualities
10 to the workplace. I don't think that that's what they
11 were looking for in employees.

12 Q. Did you believe that you were a mediocre employee
13 who was being micromanaged?

14 A. I believe I was being micromanaged.

15 Q. My question was do you believe you were a
16 mediocre employee who was being micromanaged?

17 MS. SANGHVI: Objection.

18 Go ahead.

19 BY MR. WILSON:

20 Q. Go ahead.

21 A. No, I wouldn't put myself in the category of
22 mediocre. I tried to always do the best at my job, and
23 I think a lot of my skills were not taken advantage of.

24 Q. When you -- when you were fired from IXL, when
25 was the first job interview you went on?

1 A. I don't remember the exact -- the exact date,
2 but it was pretty soon -- I think the first -- the first
3 time I -- the first interview I had was a phone
4 interview for sure, but I don't remember exactly when it
5 was. Probably about a month after or so, maybe a little
6 bit less.

7 Q. Did you have any offers of employment in the
8 first part of 2015?

9 A. No. I had an internship that was mostly
10 unpaid. I got, you know, a small stipend for it, but it
11 wasn't full-time employment, no.

12 Q. So I don't think I asked you that. I think my
13 question was did you receive any job offers in the first
14 half of 2015?

15 A. No.

16 (Deposition Exhibit 217 was marked for
17 identification.)

18 BY MR. WILSON:

19 Q. There's an exhibit I just marked, 217, 217, two
20 pages, e-mails between yourself and your father. If you --
21 are you familiar with this?

22 A. 216 -- who -- which one?

23 Q. Here, I'll put it up on your screen. It's 217,
24 but I'm going to put your e-mail to your father up on
25 the --

1 I looked for the next step in my career.

2 Q. You were training for a job in data science; is
3 that right?

4 A. I was looking into it. I was taking sort of
5 an introductory course to see if it's something that --
6 that interested me enough to -- to pursue a career in it
7 and seeing if it was something I would be good at.

8 Q. Okay. You said, "I can accelerate the 9-month
9 track into 2 months if I'm not working"; is that right?

10 A. Yes.

11 Q. Did you do that?

12 A. I considered it. It was one of my options. I
13 ended up doing the App Academy bootcamp instead because
14 I decided to pursue software engineering instead.

15 Q. And what did that App Academy bootcamp provide
16 you that you didn't already have?

17 A. Practical skills in software development. I
18 had no skills in software development up to that point,
19 so it was -- you know, it was a way to get marketable
20 skills very, very quickly, which is what I needed.

21 Q. And you did not need that in order to do another
22 job like you were doing at IXL, right?

23 A. Well, there aren't very many jobs like I had
24 at IXL.

25 Q. So my question was the training that you were

1 taking through App Academy was to move into a bit of a
2 different type of position, right?

3 A. I would say that it was -- it was a little bit
4 different. I mean, it definitely required a different
5 skill set. But, you know, I ended up pursuing that
6 after unsuccessfully pursuing ed-tech jobs. Ed-tech
7 is -- it's not huge. And I sort of fell into a weird
8 middle ground between product management and curriculum
9 design. Even my title was kind of an in-between of
10 those things. So I pursued those positions but nothing
11 formulated, and I quickly saw that I was lacking in --
12 in marketable skills, that IXL hadn't, you know, really
13 given me a whole lot of marketable skills within tech,
14 even ed-tech. So I needed to -- I needed to supplement
15 my skill set in order to become employed again, and App
16 Academy was absolutely the fastest and most efficient
17 way to do that, especially because I had to have surgery
18 again that year.

19 Q. When was that?

20 A. I had surgery again in August 2015.

21 Q. How long were you incapacitated from work?

22 MS. SANGHVI: Objection.

23 BY MR. WILSON:

24 Q. Go ahead.

25 MS. SANGHVI: Misstates characterization.

1 THE WITNESS: Well, I had surgery ten days
2 before App Academy. I attended the two first two weeks
3 of App Academy with a catheter and on medication, which
4 I went off during the program. So I probably should
5 have been -- if I had been working, I probably would
6 have taken two to three weeks off, but I took one week
7 off instead.

8 BY MR. WILSON:

9 Q. Okay. Did you tutor?

10 A. No, I -- I didn't do any tutoring during that
11 time. I don't -- not that I recall.

12 Q. Okay. You said to your dad you could tutor under
13 the table. You didn't do that?

14 A. I'm trying to remember. I don't think I did
15 any tutoring during that time. I pursued some like
16 tutoring online site things, but I -- I didn't get much
17 traction there.

18 Q. What other sources of compensation or money did
19 you have in 2015?

20 A. Unemployment.

21 Q. Other than unemployment, what?

22 A. My credit cards.

23 Q. So were you -- would you characterize that you
24 were spending 30 hours a week looking for a job in all of
25 2015?

1 A. At least, yes. App Academy itself was
2 90 hours a week.

3 Q. That was training, right?

4 A. Training and career placement.

5 Q. Okay. I'm talking about applying for jobs and
6 interviewing and following up with interviews and things
7 like that. How many hours a week did you spend doing that?

8 A. At least 30. Probably more.

9 Q. How many jobs did you apply for in 2015?

10 A. I lost count.

11 Q. More than 50?

12 A. Yes.

13 Q. More than a hundred?

14 A. Probably so, yes.

15 Q. Okay. And you have records of all of those?

16 A. I -- yeah, I believe those were sent over.

17 Right?

18 Q. So you have record of somewhere in the
19 neighborhood of 50 to a hundred jobs that you applied for?

20 A. Yes. Probably more actually.

21 Q. And how many interviews did you have?

22 A. I had probably about ten interviews in that
23 first place. And in those maybe 10 to 15 interviews
24 during the time before I decided to do App Academy, I
25 was -- you know, it was clear like from these

1 interviews, the feedback I was getting that, you know, I
2 didn't quite have the skill set I needed. It was for
3 various positions. And then after App Academy, I had
4 probably about another dozen or so interviews and I
5 ended up with a couple of offers after that.

6 Q. How many interviews did you decline to go on --
7 to go on in 2015?

8 A. I don't -- I don't recall denying a -- not
9 going on an interview if I was -- if I was offered it
10 unless it was really outside of my -- my skill set and
11 that was really clear. And that could have happened.

12 Q. How many times was that?

13 A. I honestly don't -- I don't remember. It
14 wouldn't have been very many times.

15 MS. SANGHVI: We've been going for about two
16 hours. We could use a little break.

17 MR. WILSON: We -- yeah.

18 THE VIDEOGRAPHER: The time is 3:41. We're
19 going off the record.

20 (Recess taken from 3:41 to 4:05.)

21 THE VIDEOGRAPHER: The time is 4:05. We're
22 back on the record.

23 BY MR. WILSON:

24 Q. Okay. Let's see. Mr. Duane, did you seek any
25 medical treatment for emotional distress or any

C E R T I F I C A T I O N

I, SARAH J. BINGHAM, a Certified Shorthand Reporter, within and for the State of California, do hereby certify:

That ADRIAN SCOTT CAMPE DUANE, the witness whose examination is hereinbefore set forth, was first duly sworn by me and that this transcript of said testimony is a true record of the testimony given by said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of March, 2018.

Sarah J. Bingham
CSR #13720

Exhibit 20-1:

Duane's application for a Data Scientist position at
Microsoft on January 20, 2015
(EEOC_000933-EEOC_000935; EEOC_000944)

From: Brian Schmidt (Randstad Sourceright) <v-brsch@microsoft.com>
Sent: Tuesday, January 20, 2015 8:02 PM
To: Scott Duane <adrian.scott.duane@gmail.com>
Cc: Brian Schmidt (Randstad Sourceright) <v-brsch@microsoft.com>
Subject: RE: Greetings from Microsoft!

Hi Scott,

Thank you for taking the time to complete the questionnaire! The ER Team's role is to partner with Microsoft recruiters by getting your information visible to the teams most likely to find a match against their open positions. Our next steps are:

1. Continue to apply for any additional positions you are interested in and qualified for. Please also send me the job codes for any additional positions you do apply for.
2. I will be sharing your information with our Partner Recruiters here at Microsoft.
3. If one of the recruiters should see a position match with your background they will connect with you directly for next steps. If you are contacted by a Microsoft recruiter, please let me know.
4. I will follow up with you via email on **2/6/2015** with a final status update.

Again, thanks for your interest in Microsoft. Have a great day!

Brian Schmidt
Snr. Employee Referral Profiler
Randstad Sourceright
T 425-981-4879
v-brsch@microsoft.com
brian.schmidt@randstadsourceright.com
www.randstadsourceright.com



From: Scott Duane [mailto:adrian.scott.duane@gmail.com]
Sent: Tuesday, January 20, 2015 2:08 PM
To: Brian Schmidt (Randstad Sourceright)
Subject: Re: Greetings from Microsoft!

Hi Brian,

Thanks for reaching out. I've attached the completed questionnaire and created an account the Microsoft website under this email address. I've applied for the following positions, which are all data science positions in the San Francisco Bay Area:

896235
896230
899042

My preference is to work in San Francisco proper (the first two positions) but I'm definitely open to Mountain View as well.

Thanks very much and let me know if there's any further information I can provide you with. Best,

Scott

On Mon, Jan 19, 2015 at 5:12 PM, Brian Schmidt (Randstad Sourceright) <v-brsch@microsoft.com> wrote:



Hi Adrian,

Your resume has been submitted to Microsoft through our U.S. Employee Referral Program. We received your resume from Jacob Hughes. Thank you for your interest in pursuing a career with Microsoft.

To ensure your information is forwarded to the appropriate recruiter, please reply to this mail once you have completed your questionnaire. You may also consider the following options as ways to increase your visibility:

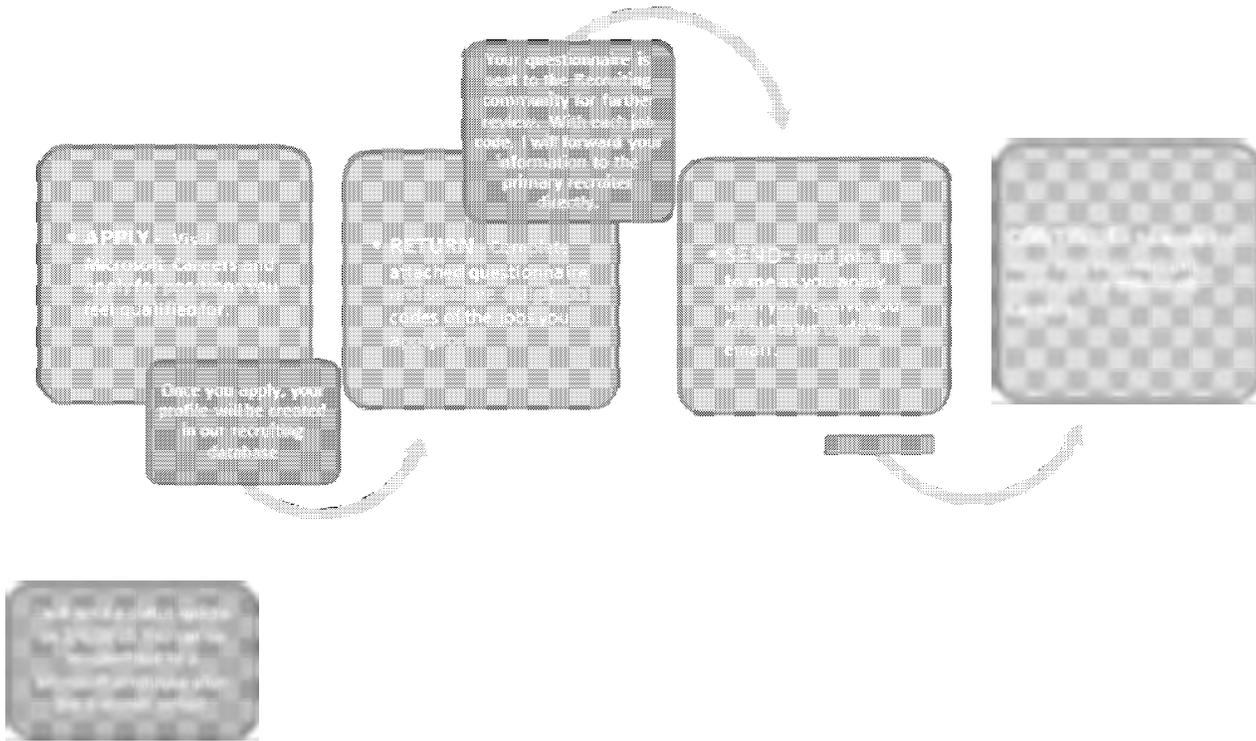
- Create a log in at **Microsoft Careers** and apply for available positions online if you have not already. If you cannot find a position to apply for now please still complete and return your questionnaire.
- If your resume has recently changed, send me your most up-to-date version.

Being referred to the program is not a substitute for applying directly for any position that you are interested in and qualified for. Please be sure to apply to any position you would like to be considered for.

Please note, I am not a recruiter myself; I am a liaison between you and the Microsoft recruiting community. My job is to raise your visibility in hopes of getting you in contact with aligned recruiters.

Below is an outline of what you can expect after I receive your completed questionnaire:

- Upon application via **Microsoft Careers**, your information automatically creates a profile in our Applicant Tracking System (ATS), which is accessible by Microsoft Staffing.
- You will have my services as a Profiler for the first three weeks in the program (beginning from 1/16/2015).
- I will forward your resume and questionnaire to recruiters who are aligned to the positions you may be interested in and qualified for. Please email me any jobs you have applied for so I can contact these recruiters directly.
- I will provide you with a status update of your referral on 2/6/2015 – this will be your final day working with me. Often the recruiting process takes more time than the time you and I have together, and please be aware that the status update I will provide is not a definitive answer on whether or not Microsoft would like to move forward with you, only an update on whether I see activity on your profile at that point.
- Your referral status is valid in our system for 6 months; you can be resubmitted by a Microsoft employee after this 6 month period.



For your convenience, I've attached an FAQ Sheet about the Employee Referral Program; please refer to this for any questions you have. If you continue to have questions, please let me know and I can schedule a brief phone review of the process with you. Thank you again for considering Microsoft, and I look forward to working with you.

Brian Schmidt
Employee Referral Profiler
Randstad Sourceright
T 425-981-4879
y-brsch@microsoft.com
brian.schmidt@randstadsourceright.com
www.randstadsourceright.com



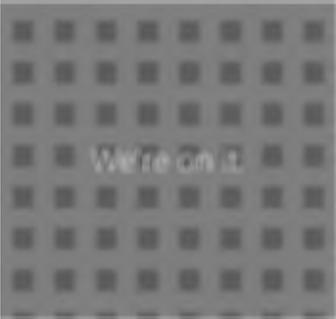
From: staffing@microsoft.com
Sent: Tuesday, January 20, 2015 4:25 PM
To: adrian.scott.duane@gmail.com
Subject: Thank you for applying to Microsoft.

Microsoft logo

Microsoft Careers



Thank you for applying to Microsoft



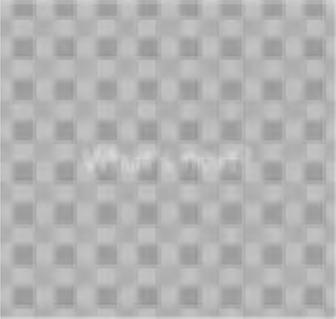
We're on it

Scott, thank you for applying to Microsoft! We have received your resume and appreciate your interest in our job openings.

[Review the job description for Data Scientist - 896230](#)

[Review the job description for Data Scientist](#)

(applied Jan 20 2015)



We're on it

Your information has been entered into the Microsoft jobs database. It is now available to recruiters who specialize in areas that match your skills and interests. If there is a match, a recruiter may contact you directly with next steps.

[Review interview tips](#)

[Create a job alert](#)

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Exhibit 20-2:

Duane's general application to MIND January 22, 2015
(EEOC_000482-EEOC_000487)

From: A. Scott Duane <adrian.duane@gmail.com>
Sent: Thursday, January 22, 2015 6:44 PM
To: Nina Wu <ninawu88@gmail.com>
Subject: Re: Resume

Cool. That sounds like an amazing environment.

How do you think he'd react to the situation with me and IXL? From what you said about your interview with them I could almost see me being fired for the reasons I was as a positive to them.

On Thu, Jan 22, 2015 at 3:19 PM, Nina Wu <ninawu88@gmail.com> wrote:

Maybe start watching all of MIND's videos, namely, Matthew's TEDx Talk. He's the visionary and the one you want to impress. They like really out of the box thinking, humility when you don't know something, but the drive to get to the bottom of what you don't know, and an overall culture of thirst for knowledge and deep understanding. We can talk more about once you start getting into the process.

But yay!

On Thu, Jan 22, 2015 at 3:17 PM, Nina Wu <ninawu88@gmail.com> wrote:

The coolest!! ^^

On Thu, Jan 22, 2015 at 1:21 PM, A. Scott Duane <adrian.duane@gmail.com> wrote:

Ohhh that's exciting!! Thanks Nina! How cool would it be to be colleagues again?

On Thu, Jan 22, 2015 at 10:46 AM, Nina Wu <ninawu88@gmail.com> wrote:

Angela, our talent person, seemed to like your resume. So maybe expect an email from her?

!!!

Her words below:

What a great profile! Thank you for sharing your friend's resume.

I will definitely follow up with him. Matt Feldmann hired 3 new talents recently. I have to double check with him if he needs one more Mathematician in his team immediately.

As part of our strategy to build a pool of candidates, we leave mathematician positions open in order to attract talents at all times.

Matt Feldmann is looking for mathematicians that are excited about probing for mathematical understanding. Someone that can assess a student's depth of mathematical understanding, The ideal fit is someone that will lead the mathematics assessment work in his team.

As per his resume, Scott can be this person. Do you know if he is open to relocate?

One way or another I really appreciate the great referral. I will let you know talking to him.

Your words about MIND are inspiring! Amazing professionals like YOU make our organization a special place.

On Wed, Jan 21, 2015 at 5:09 PM, A. Scott Duane <adrian.duane@gmail.com> wrote:

Hey Neeners --

Here's my resume. Thanks buddy!!

Scott

--

Nina Wu
Educator | Artist
239.297.5604

--

Nina Wu
Educator | Artist
239.297.5604

--

Nina Wu
Educator | Artist
239.297.5604

From: A. Scott Duane <adrian.duane@gmail.com>
Sent: Wednesday, January 21, 2015 8:09 PM
To: Nina Wu <ninawu88@gmail.com>
Subject: Resume
Attach: tech_resume.pdf

Hey Neeners --

Here's my resume. Thanks buddy!!

Scott

A. SCOTT DUANE

2303 Park Blvd, Apt 5 ◊ Oakland, CA 94606
(507) 581-4100 ◊ adrian.scott.duane@gmail.com

EDUCATION

University of California, San Diego *June 2013*
Ph.D. in Mathematics
GPA: 3.93
Research area: Algebraic and enumerative combinatorics

Carleton College *June 2007*
B.A. in Mathematics
GPA: 3.56
Magna cum laude graduate

WORK EXPERIENCE

IXL Learning July 2013 - January 2015
Product Analyst *San Mateo, CA*

- Managed the entire development cycle for K-12 math practice software, including brainstorming new skills, designing questions and explanations, writing specifications, testing, and debugging
- Created new user interfaces, such as customized iPad and Android tablet keyboards and a sinusoidal graphing component
- Aligned the IXL practice software with educational standards, including the Common Core

UC San Diego September 2008 - June 2013
Teaching Assistant *San Diego, CA*

- Courses included Precalculus, Single and Multivariable Calculus, Linear Algebra, Differential Equations, and Mathematical Reasoning (proof writing)

UC San Diego January 2012 - April 2012
Associate Instructor *San Diego, CA*

- Instructor of record for a university-level Precalculus course

Johns Hopkins Center for Talented Youth Summers 2010 - 2012
Instructor *La Jolla, CA & Palo Alto, CA*

- Taught intensive 3-week mathematics courses to gifted youth ages 10-12
- Designed the curriculum for each course, heavy on hands-on lessons on advanced concepts such as fractal geometry, modular arithmetic, recurrence relations, and countability of sets

Johns Hopkins Center for Talented Youth Summer 2009
Program Assistant *La Jolla, CA*

- Assisted in teaching Inventions, an intensive 3-week science course for gifted youth ages 8-10

Carleton College Summer Math Program for Women Summer 2008
Program Assistant *Northfield, MN*

- Managed program logistics such as housing, food, weekend activities, and supply acquisition

Carleton College Department of Mathematics September 2007 - June 2008
Teaching Intern *Northfield, MN*

- Ran weekly problem-solving sessions, graded homework, and held office hours for Calculus I, Multivariable Calculus, and Introduction to Mathematics
- Assisted faculty in writing and grading exams and managing other course logistics

Wabash College

Undergraduate Researcher

Summer 2006

Crawfordsville, IN

- Completed a research project on the chromatic number of the zero-divisor graphs of the groups Z_n , resulting in a publication

PUBLICATIONS

Duane, Adrian S., and Remmel, Jeff, *Pattern Matching Statistics in the Permutations S_n and the Alternating Permutations A_n for Minimally Overlapping Patterns*, doctoral dissertation, June 2013.

Duane, Adrian S., Garsia, Adriano, and Zabrocki, Michael, *A new "div" arising from the two-part case of the shuffle conjecture*, Journal of Algebraic Combinatorics, published online June 26, 2012.

Duane, Adrian S. and Remmel, Jeff, *Minimal Overlapping Patterns in Colored Permutations*, Electronic Journal of Combinatorics, Volume 18, Issue 2, 2011.

Duane, A., *Proper Colorings and p-partite Structures in the Zero Divisor Graph*, Rose-Hulman Journal of Undergraduate Mathematics, Volume 7, Issue 2, 2006.

SELECTED TALKS

Counting Occurrences of Minimally Overlapping Patterns in Alternating Permutations Using the Maximum Packing Number, Permutation Patterns, Glasgow, Scotland, June 14, 2012.

Minimal Overlapping Patterns in Alternating Permutations, Permutation Patterns, San Luis Obispo, California, June 20, 2011.

A Ubiquitous Sequence: Catalan Numbers in Lattice Paths and Trees, invited speaker, Mills College, April 15, 2011.

REFERENCES

Jessica Morse

Relationship: Colleague at IXL Learning

Product Analyst at IXL Learning

- Email: jessica.ilene.morse@gmail.com
- Phone: (404) 805-5154

Nina Wu

Relationship: Colleague at IXL Learning

Educational Game Designer at MIND Research Institute

- Email: ninawu88@gmail.com
- Phone: (239) 297-5604

Jeff Remmel

Relationship: Dissertation advisor

Professor of Mathematics at UC San Diego

- Email: jremmel@math.ucsd.edu

Deanna Haunsperger

Relationship: Undergraduate advisor & former supervisor

Professor of Mathematics at Carleton College

- Email: dhaunspe@carleton.edu
- Phone: (507) 222-4360

Exhibit 20-3:

Duane's enrollment for Hired.com on January 27, 2015
(EEOC_000952)

From: reply@hired.com on behalf of
Hired <reply@hired.com>
Sent: Tuesday, January 27, 2015 2:45 PM
To: Scott Duane <adrian.scott.duane@gmail.com>
Subject: Get Hired soon!



Hi Scott,

Congratulations on signing up for Hired, our marketplace model is going to redefine the job search process as you know it.

How so?

It's simple: When you participate in a Hired auction, you get in front of some of the most desirable companies around. If employers are interested, they'll come to you with salary, equity, and benefits information to start the conversation. Besides getting a transparent process, you'll also get multiple offers.

And did we mention it happens in a matter of days, not weeks? Here's how it works:

- You complete your Hired profile. Only complete profiles get the love, so make sure yours is polished and ready to go. Finish it here: <http://hired.com/profile>
- We review it and look for a fit with current employer demand. You'll hear from us whether or not we can help you out.
- Enter one of our weekly auctions and watch the offers roll in. Most candidates see 5+ offers at once. Pick and choose the employers you want to chat with. All offers are non-binding.

That's it. Really.

We created Hired to make finding a job easier, faster, and ultimately, less painful for you. The next auction starts on February 2nd. Go ahead--complete your profile and submit to join our marketplace here: <http://hired.com/profile>

Cheers,
The Hired Team

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Exhibit 20-4:

Duane's inquiries about Scientist positions at Pandora on
February 10, 2015 (EEOC_000921)

From: Scott Duane <adrian.scott.duane@gmail.com>
Sent: Tuesday, February 10, 2015 6:27 PM
To: Katrina Glaeser <katrinaglaeser@gmail.com>
Subject: Re: Intro!

Hey Kat -

As Patrick said, I'm looking at data science positions, and I saw that Pandora had 3 different "scientist" positions listed that sounded really interesting.

To give you a little more about my background, I have a PhD in math and worked as an educational software designer for a year and a half. I haven't yet worked as a data scientist, so what I'm looking for is a position that would be open to someone with a solid quantitative background who could learn on the job.

If you're open to it, I'd love to hear what you think of Pandora. I know you haven't been there too long, but do you enjoy working there so far? Is it interesting/challenging? What's the training been like, and what was your background going into it?

If you'd rather meet up in person and discuss over a beer, hit me up. Thanks in advance for any info,

Scott

On Tue, Feb 10, 2015 at 3:17 PM, Scott Duane <adrian.scott.duane@gmail.com> wrote:
Thanks for the intro Patrick!

On Mon, Feb 9, 2015 at 8:33 PM, Patrick Driscoll <patrick.ryan.driscoll@gmail.com> wrote:

I think you two have probably met before during at least one party of mine, but just to make it official...

Scott is a friend of mine from grad school, looking for a data science position. I believe that he's interested in knowing some more about such a position at Pandora.

Kat is a friend of mine that I know from Yammer. She is a killer data scientist and probably knows a thing or two about such a position at Pandora.

I'll let you two take it from here :)

All the best,
P.

Exhibit 20-5:

Duane's application for a Member of Technical Staff
position at Salesforce on February 13, 2015
(EEOC_000442-EEOC_000445; EEOC_000602)

From: Scott Duane <adrian.scott.duane@gmail.com>
Sent: Friday, February 13, 2015 1:01 PM
To: aeastham@salesforce.com
Subject: jobby things
Attach: Salesforce cover letter.pdf; tech_resume.pdf

Hey Asher -

Attached is my resume and cover letter for the MTS position. Thanks again!

Scott

February 13, 2015
Hiring Manager
Salesforce
San Francisco, CA

Dear Hiring Manager,

I'm writing to apply to be a Member of the Technical Staff at Salesforce. As an aspiring software developer, I would be very excited to join a company with such a far-reaching, impactful product.

I earned my PhD in Mathematics from the University of California, San Diego in June 2013, with a focus on algebraic and enumerative combinatorics. As part of my dissertation work, I regularly implemented code in Java and Maple to retrieve and analyze coefficients of certain recursively defined polynomials. Additionally, I have a strong working knowledge of HTML, R and SQL.

After grad school, I immediately began working at IXL Learning, an educational technology company that creates math practice software for K-12 students. At IXL, I've designed and overseen the implementation of major components of our website, including a significant portion of the skills in our Precalculus section, an improvement to our accessibility options for students with print-related disabilities, and a complete overhaul of our mobile app keyboard. These projects have given me a deep understanding of the software development process as well as a solid background in user experience design and best practices.

I'm now seeking a position with greater technical challenge at a company that's doing interesting, engaging work. I believe I could make excellent contributions as a Member of the Technical Staff at Salesforce.

Thank you for considering my application. I look forward to hearing from you soon.

Sincerely yours,

Scott Duane

2303 Park Blvd, Apt 5, Oakland, CA 94606 507-581-4100 adrian.scott.duane@gmail.com

A. SCOTT DUANE

2303 Park Blvd, Apt 5 ◊ Oakland, CA 94606
 (507) 581-4100 ◊ adrian.scott.duane@gmail.com

EDUCATION**University of California, San Diego**

June 2013

Ph.D. in Mathematics

GPA: 3.93

Research area: Algebraic and enumerative combinatorics

Carleton College

June 2007

B.A. in Mathematics

GPA: 3.56

Magna cum laude graduate**WORK EXPERIENCE****IXL Learning**

July 2013 - January 2015

*Product Analyst**San Mateo, CA*

- Managed the entire development cycle for K-12 math practice software, including brainstorming new skills, designing questions and explanations, writing specifications, testing, and debugging
- Created new user interfaces, such as customized iPad and Android tablet keyboards and a sinusoidal graphing component
- Aligned the IXL practice software with educational standards, including the Common Core

UC San Diego

September 2008 - June 2013

*Teaching Assistant**San Diego, CA*

- Courses included Precalculus, Single and Multivariable Calculus, Linear Algebra, Differential Equations, and Mathematical Reasoning (proof writing)

UC San Diego

January 2012 - April 2012

*Associate Instructor**San Diego, CA*

- Instructor of record for a university-level Precalculus course

Johns Hopkins Center for Talented Youth

Summers 2010 - 2012

*Instructor**La Jolla, CA & Palo Alto, CA*

- Taught intensive 3-week mathematics courses to gifted youth ages 10-12
- Designed the curriculum for each course, heavy on hands-on lessons on advanced concepts such as fractal geometry, modular arithmetic, recurrence relations, and countability of sets

Johns Hopkins Center for Talented Youth

Summer 2009

*Program Assistant**La Jolla, CA*

- Assisted in teaching Inventions, an intensive 3-week science course for gifted youth ages 8-10

Carleton College Summer Math Program for Women

Summer 2008

*Program Assistant**Northfield, MN*

- Managed program logistics such as housing, food, weekend activities, and supply acquisition

Carleton College Department of Mathematics

September 2007 - June 2008

*Teaching Intern**Northfield, MN*

- Ran weekly problem-solving sessions, graded homework, and held office hours for Calculus I, Multivariable Calculus, and Introduction to Mathematics

- Assisted faculty in writing and grading exams and managing other course logistics

Wabash College*Undergraduate Researcher*

Summer 2006

Crawfordsville, IN

- Completed a research project on the chromatic number of the zero-divisor graphs of the groups Z_n , resulting in a publication

PROGRAMMING LANGUAGES

Java (expert), Maple (working knowledge), R (working knowledge), Matlab (working knowledge)

PUBLICATIONS

Duane, Adrian S., and Remmel, Jeff, *Pattern Matching Statistics in the Permutations S_n and the Alternating Permutations A_n for Minimally Overlapping Patterns*, doctoral dissertation, June 2013.

Duane, Adrian S., Garsia, Adriano, and Zabrocki, Michael, *A new "div" arising from the two-part case of the shuffle conjecture*, Journal of Algebraic Combinatorics, published online June 26, 2012.

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Duane, A., *Proper Colorings and p -partite Structures in the Zero Divisor Graph*, Rose-Hulman Journal of Undergraduate Mathematics, Volume 7, Issue 2, 2006.

SELECTED TALKS

Counting Occurrences of Minimally Overlapping Patterns in Alternating Permutations Using the Maximum Packing Number, Permutation Patterns, Glasgow, Scotland, June 14, 2012.

Minimal Overlapping Patterns in Alternating Permutations, Permutation Patterns, San Luis Obispo, California, June 20, 2011.

A Ubiquitous Sequence: Catalan Numbers in Lattice Paths and Trees, invited speaker, Mills College, April 15, 2011.

REFERENCES

Jessica Morse*Relationship: Colleague at IXL Learning*

Product Analyst at IXL Learning

- Email: jessica.ilene.morse@gmail.com
- Phone: (404) 805-5154

Nina Wu*Relationship: Colleague at IXL Learning*

Educational Game Designer at MIND Research Institute

- Email: ninawu88@gmail.com
- Phone: (239) 297-5604

Josh Gevirtz*Relationship: Colleague at IXL Learning*

Former Software Engineer at IXL Learning

- Email: joshgev@gmail.com
- Phone: (765) 717-5302

Jeff Remmel*Relationship: Dissertation advisor*

Professor of Mathematics at UC San Diego

- Email: jremmel@math.ucsd.edu

From: Jobs Site Guest User <sfdcapp_gacks@salesforce.com>
Sent: Friday, February 13, 2015 5:37 PM
To: adrian.scott.duane@gmail.com
Subject: salesforce.com Job Application - Software Engineer - Pardot Web Analytics Team



Dear Scott Duane,

Thank you for submitting your resume/CV to salesforce.com through our Careers website.

We will review your resume to determine if your qualifications are a match for the Software Engineer - Pardot Web Analytics Team position. If there is a fit, we will contact you to discuss next steps in the process. We will keep your resume/CV on file in the event another position opens up which matches your background.

We appreciate your interest in salesforce.com and wish you success in your job search.

This is an auto-generated message from the salesforce.com careers site. Please DO NOT REPLY to this message.

Regards,

salesforce.com Recruiting

Exhibit 20-6:

Duane's inquiries about potential instructor position at the Center for Talented Youth (CTY) in Santa Cruz on March 20, 2015 (EEOC_000435-EEOC_000437)

From: Scott Duane <adrian.scott.duane@gmail.com>
Sent: Friday, March 20, 2015 2:38 PM
To: rachel.cty@jhu.edu
Subject: CTY Santa Cruz
Attach: tech_resume.pdf

Hi Rachel,

Heather Jones recommended that I email you about potential instructor positions at CTY Santa Cruz this summer. I worked for CTY during graduate school as a PA, TA, and instructor at La Jolla and Stanford.

I've attached my resume. Heather wasn't sure what (if any) Santa Cruz positions were still open, but I'd feel qualified teaching any math or computer science class.

Thanks for your time. Best,

Scott Duane

A. SCOTT DUANE

1538 Lexington Ave ◊ El Cerrito, CA 94530
 (507) 581-4100 ◊ adrian.scott.duane@gmail.com

EDUCATION

University of California, San Diego

June 2013

Ph.D. in Mathematics

GPA: 3.93

Research area: Algebraic and enumerative combinatorics

Carleton College

June 2007

B.A. in Mathematics

GPA: 3.56

Magna cum laude graduate**PROGRAMMING LANGUAGES**

Java (fluent), Ruby (proficient), Python (proficient), Swift (proficient), HTML/CSS (proficient), R (proficient), Matlab (proficient), Maple (proficient)

WORK EXPERIENCE

IXL Learning

July 2013 - January 2015

*Product Analyst**San Mateo, CA*

- Managed the entire development cycle for K-12 math practice software, including brainstorming new skills, designing questions and explanations, writing specifications, testing, and debugging
- Created new user interfaces, such as customized iPad and Android tablet keyboards and a sinusoidal graphing component
- Aligned the IXL practice software with educational standards, including the Common Core

UC San Diego

September 2008 - June 2013

*Teaching Assistant**San Diego, CA*

- Courses included Precalculus, Single and Multivariable Calculus, Linear Algebra, Differential Equations, and Mathematical Reasoning (proof writing)

UC San Diego

January 2012 - April 2012

*Associate Instructor**San Diego, CA*

- Instructor of record for a university-level Precalculus course

Johns Hopkins Center for Talented Youth

Summers 2010 - 2012

*Instructor**La Jolla, CA & Palo Alto, CA*

- Taught intensive 3-week mathematics courses to gifted youth ages 10-12
- Designed the curriculum for each course, heavy on hands-on lessons on advanced concepts such as fractal geometry, modular arithmetic, recurrence relations, and countability of sets

Johns Hopkins Center for Talented Youth

Summer 2009

*Program Assistant**La Jolla, CA*

- Assisted in teaching Inventions, an intensive 3-week science course for gifted youth ages 8-10

Carleton College Summer Math Program for Women

Summer 2008

*Program Assistant**Northfield, MN*

- Managed program logistics such as housing, food, weekend activities, and supply acquisition

Carleton College Department of Mathematics

September 2007 - June 2008

Teaching Intern

Northfield, MN

- Ran weekly problem-solving sessions, graded homework, and held office hours for Calculus I, Multivariable Calculus, and Introduction to Mathematics
- Assisted faculty in writing and grading exams and managing other course logistics

Wabash College

Summer 2006

Undergraduate Researcher

Crawfordsville, IN

- Completed a research project on the chromatic number of the zero-divisor graphs of the groups Z_n , resulting in a publication

PUBLICATIONS

Duane, Adrian S., and Remmel, Jeff, *Pattern Matching Statistics in the Permutations S_n and the Alternating Permutations A_n for Minimally Overlapping Patterns*, doctoral dissertation, June 2013.

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Duane, Adrian S. and Remmel, Jeff, *Minimal Overlapping Patterns in Colored Permutations*, Electronic Journal of Combinatorics, Volume 18, Issue 2, 2011.

Duane, A., *Proper Colorings and p -partite Structures in the Zero Divisor Graph*, Rose-Hulman Journal of Undergraduate Mathematics, Volume 7, Issue 2, 2006.

SELECTED TALKS

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REFERENCES**Jessica Morse**

Product Analyst at IXL Learning

Relationship: Colleague at IXL Learning

- Email: jessica.ilene.morse@gmail.com
- Phone: (404) 805-5154

Nina Wu

Educational Game Designer at MIND Research Institute

Relationship: Colleague at IXL Learning

- Email: ninawu88@gmail.com
- Phone: (239) 297-5604

Josh Gevirtz

Former Software Engineer at IXL Learning

Relationship: Colleague at IXL Learning

- Email: joshgev@gmail.com
- Phone: (765) 717-5302

Jeff Remmel

Professor of Mathematics at UC San Diego

Relationship: Dissertation advisor

- Email: jremmel@math.ucsd.edu

Exhibit 20-7:

Duane's application to make the San Diego Pride organization website accessible on March 27, 2015
(EEOC_000429-EEOC_000431)

From: Scott Duane <adrian.scott.duane@gmail.com>
Sent: Friday, March 27, 2015 7:49 PM
To: accessibility@sdpride.org
Subject: Website accessibility internship
Attach: tech_plus_resume.pdf

Hi,

A friend of mine, Liat Wexler, recently let me know that you were looking for a volunteer to make your website accessible.

I'm an able-bodied queer trans man living in the SF Bay Area. I lived in San Diego for five years and was on the SD Pride Diversity Task Force for two years.

Professionally, my background is in math and tech -- I spent a year and a half as a designer at IXL Learning, an educational technology company up here in Silicon Valley. At IXL, I advocated for as much accessibility on the site as the company was willing to implement, and spearheaded a project to improve our functionality for students with print-related disabilities. Through this work, I became familiar with accessibility standards and requirements for web technologies.

Additionally, I've been an advocate in the trans community for many years, including working with a group of activists implementing the FAIR Education Act. I learned a lot about disability advocacy with the folks working on the FAIR Act, and always try to incorporate accessibility awareness into my trans activism.

As it happens, I'm taking some time off to build up my web and mobile development portfolio. I'd love to take on this project for SD Pride, both as a community service and a way to add to my resume. Though I live in the Bay Area, I would be willing to come down to San Diego periodically to meet in person.

I've attached my resume. If you think I'd be a good fit for this volunteer/internship or you have questions about my skills or background, feel free to shoot me an email or call me at 507.581.4100.

Best,

Scott Duane

A. SCOTT DUANE

1538 Lexington Ave ◊ El Cerrito, CA 94530
(507) 581-4100 ◊ adrian.scott.duane@gmail.com

EDUCATION

University of California, San Diego

June 2013

Ph.D. in Mathematics

GPA: 3.93

Research area: Algebraic and enumerative combinatorics

Carleton College

June 2007

B.A. in Mathematics

GPA: 3.56

Magna cum laude graduate

PROGRAMMING LANGUAGES

Java (fluent), Ruby (proficient), Python (proficient), Swift (proficient), HTML/CSS (proficient), R (proficient), Matlab (proficient), Maple (proficient)

TECHNICAL EXPERIENCE

IXL Learning

July 2013 - January 2015

Product Analyst

San Mateo, CA

- Managed the entire development cycle for K-12 math practice software, including brainstorming new skills, designing questions and explanations, writing specifications, testing, and debugging
- Created new user interfaces, such as customized iPad and Android tablet keyboards and a sinusoidal graphing component

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September 2008 - June 2013

Teaching Assistant

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San Diego, CA

- Instructor of record for a university-level Precalculus course

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Summers 2010 - 2012

Instructor

La Jolla, CA & Palo Alto, CA

- Taught intensive 3-week mathematics courses to gifted youth ages 10-12
- Designed the curriculum for each course, heavy on hands-on lessons on advanced concepts such as fractal geometry, modular arithmetic, recurrence relations, and countability of sets

Carleton College Summer Math Program for Women

Summer 2008

Program Assistant

Northfield, MN

- Managed program logistics such as housing, food, weekend activities, and supply acquisition

Carleton College Department of Mathematics

September 2007 - June 2008

Teaching Intern

Northfield, MN

- Ran weekly problem-solving sessions, graded homework, and held office hours for Calculus I, Multivariable Calculus, and Introduction to Mathematics
- Assisted faculty in writing and grading exams and managing other course logistics

Wabash College

Summer 2006

Undergraduate Researcher

Crawfordsville, IN

- Completed a research project on the chromatic number of the zero-divisor graphs of the groups Z_n , resulting in a publication

NON-TECHNICAL EXPERIENCE

Visible Bodies

January 2011 - present

*Founder, Producer, & Video Editor**San Diego, CA, Oakland, CA & Minneapolis, MN*

- Produced narrated photography exhibits in two major cities showcasing the lives of transgender individuals
- Raised funds, solicited photographers, managed community relationships, maintained a fiscal sponsorship, and arranged exhibitions across the United States and in Europe
- Collaborated with established for-profit and non-profit organizations to create educational materials and events for trans people

Transgress Press

August 2013 - April 2014

*Social Media Consultant & Event Organizer**Oakland, CA*

- Maintained the social media presence for a grassroots publishing company, tripling its Facebook following to 1000+
- Organized book release events in several major cities across the United States

Hillcrest Youth Center

March 2010 - June 2013

*Group Facilitator**San Diego, CA*

- Served as a mentor and discussion group facilitator at a drop-in center for LGBT teenagers

PUBLICATIONS

Duane, Adrian S., and Remmel, Jeff, *Pattern Matching Statistics in the Permutations S_n and the Alternating Permutations A_n for Minimally Overlapping Patterns*, doctoral dissertation, June 2013.

Duane, Adrian S., Garsia, Adriano, and Zabrocki, Michael, *A new "div" arising from the two-part case of the shuffle conjecture*, Journal of Algebraic Combinatorics, published online June 26, 2012.

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Duane, A., *Proper Colorings and p -partite Structures in the Zero Divisor Graph*, Rose-Hulman Journal of Undergraduate Mathematics, Volume 7, Issue 2, 2006.

Duane, A. Scott, "Trans Men, Trans Women, and Surrendering the Sisterhood at Women's Colleges", the Advocate, October 27, 2014.

Duane, A. Scott, "Men Like Me," a chapter in the anthology *Manning Up: Trans Men on Finding Brotherhood, Family, and Themselves*, Transgress Press, June 2014.

REFERENCES

Nina Wu

Educational Game Designer at MIND Research Institute

Relationship: Colleague at IXL Learning

- Email: ninawu88@gmail.com
- Phone: (239) 297-5604

Curtis Crane

Owner and Surgeon at Brownstein & Crane Surgical Services

Relationship: Collaborator on the Trans Health Video Project

Email: curtis@brownsteincrane.com

- Phone: (603) 667-5555

Jeff Remmel

Professor of Mathematics at UC San Diego

Relationship: Dissertation advisor

- Email: jremmel@math.ucsd.edu

Zander Keig

Licensed Clinical Social Worker at the Veterans' Administration

Relationship: Colleague at Transgress Press

- Email: zander.keig@gmail.com
- Phone: (415) 504-7149

Exhibit 20-8:

Duane's involvement with a career coach at the Bay Area
Video Coalition (BVAC) on April 1, 2015
(EEOC_000424-EEOC_000428;
EEOC_000512-EEOC_000515)

From: Scott Duane <adrian.scott.duane@gmail.com>
Sent: Wednesday, April 1, 2015 4:10 AM
To: Vince Caminiti <vincecaminiti@bavc.org>
Subject: Re: Welcome to TechSF
Attach: Resume PDF.pdf; Resume Word Doc.docx

Hi Vince,

Attached is my resume as a Word doc. I don't have access to Word on my own computer -- I use a Mac version (Pages). I've attached the exported Word doc as well as the PDF, in case formatting has been lost in the export. Best,

Scott

On Mon, Mar 23, 2015 at 9:41 AM, Vince Caminiti <vincecaminiti@bavc.org> wrote:

Welcome aboard!

I will be your career coach at BAVC and we will need to setup an initial meeting to discuss your job search goals and how we work together. Let me know when you might be available for an in-person meeting here at BAVC. My contact info is in my email signature.

In preparation for that meeting please:

- Send me a copy of your resume in Word format
- Connect with me on LinkedIn
- Join the TechSF Participant Group on LinkedIn

Looking forward to meeting you and helping you land that gig!

--

Vince Caminiti

Tech Career Specialist

Bay Area Video Coalition

Direct Line: 415 558-2120

vince@bavc.org

--

Vince Caminiti

Tech Career Specialist

Bay Area Video Coalition

Direct Line: 415 558-2120

vince@bavc.org

A. SCOTT DUANE

1538 Lexington Ave, El Cerrito, CA 94530
(507) 581-4100, adrian.scott.duane@gmail.com

EDUCATION

University of California, San Diego *June 2013*
Ph.D. in Mathematics
GPA: 3.93
Research area: Algebraic and enumerative combinatorics

Carleton College *June 2007*
B.A. in Mathematics
GPA: 3.56
Magna cum laude graduate

PROGRAMMING LANGUAGES

Java (fluent), Ruby (proficient), Python (proficient), Swift (proficient), HTML/CSS (proficient), R (proficient), Matlab (proficient), Maple (proficient)

WORK EXPERIENCE

IXL Learning *July 2013 - January 2015*
Product Analyst *San Mateo, CA*

- Managed the entire development cycle for K-12 math practice software, including brainstorming new skills, designing questions and explanations, writing specifications, testing, and debugging
- Created new user interfaces, such as customized iPad and Android tablet keyboards and a sinusoidal graphing component
- Aligned the IXL practice software with educational standards, including the Common Core

UC San Diego *September 2008 - June 2013*
Teaching Assistant *San Diego, CA*

- Courses included Precalculus, Single and Multivariable Calculus, Linear Algebra, Differential Equations, and Mathematical Reasoning (proof writing)

UC San Diego *January 2012 - April 2012*
Associate Instructor *San Diego, CA*

- Instructor of record for a university-level Precalculus course

Johns Hopkins Center for Talented Youth Summers 2010 - 2012
Instructor *La Jolla, CA & Palo Alto, CA*

- Taught intensive 3-week mathematics courses to gifted youth ages 10-12
- Designed the curriculum for each course, heavy on hands-on lessons on advanced concepts such as fractal geometry, modular arithmetic, recurrence relations, and countability of sets

Johns Hopkins Center for Talented Youth *Summer 2009*
Program Assistant *La Jolla, CA*

- Assisted in teaching Inventions, an intensive 3-week science course for gifted youth ages 8-10

Carleton College Summer Math Program for Women *Summer 2008*
Program Assistant *Northfield, MN*

- Managed program logistics such as housing, food, weekend activities, and supply acquisition

Carleton College Department of Mathematics *September 2007 - June 2008*
Teaching Intern *Northfield, MN*

- Ran weekly problem-solving sessions, graded homework, and held office hours for Calculus I and II, Multivariable Calculus, and Introduction to Mathematics
- Assisted faculty in writing and grading exams and managing other course logistics

Wabash College

Summer 2006

Undergraduate Researcher

Crawfordsville, IN

- Completed a research project on the chromatic number of the zero-divisor graphs of the groups \mathbb{Z}_n , resulting in a publication

PUBLICATIONS

Duane, Adrian S., and Remmel, Jeff, *Pattern Matching Statistics in the Permutations S_n and the Alternating Permutations A_n for Minimally Overlapping Patterns*, doctoral dissertation, June 2013.

Duane, Adrian S., Garsia, Adriano, and Zabrocki, Michael, *A new "div" arising from the two-part case of the shuffle conjecture*, Journal of Algebraic Combinatorics, published online June 26, 2012.

Duane, Adrian S. and Remmel, Jeff, *Minimal Overlapping Patterns in Colored Permutations*, Electronic Journal of Combinatorics, Volume 18, Issue 2, 2011.

Duane, A., *Proper Colorings and p-partite Structures in the Zero Divisor Graph*, Rose-Hulman Journal of Undergraduate Mathematics, Volume 7, Issue 2, 2006.

SELECTED TALKS

Counting Occurrences of Minimally Overlapping Patterns in Alternating Permutations Using the Maximum Packing Number, Permutation Patterns, Glasgow, Scotland, June 14, 2012.

Minimal Overlapping Patterns in Alternating Permutations, Permutation Patterns, San Luis Obispo, California, June 20, 2011.

A Ubiquitous Sequence: Catalan Numbers in Lattice Paths and Trees, invited speaker, Mills College, April 15, 2011.

REFERENCES

Jessica Morse

Sales Intern at Optimizely

Relationship: Colleague at IXL Learning

- Email: jessica.ilene.morse@gmail.com
- Phone: (404) 805-5154

Nina Wu

Educational Game Designer at MIND Research Institute

Relationship: Colleague at IXL Learning

- Email: ninawu88@gmail.com
- Phone: (239) 297-5604

Josh Gevirtz

Former Software Engineer at IXL Learning

Relationship: Colleague at IXL Learning

- Email: joshgev@gmail.com
- Phone: (765) 717-5302

Jeff Remmel

Professor of Mathematics at UC San Diego

Relationship: Dissertation advisor

- Email: jremmel@math.ucsd.edu

A. SCOTT DUANE

1538 Lexington Ave, El Cerrito, CA 94530
(507) 581-4100, adrian.scott.duane@gmail.com

EDUCATION

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GPA: 3.93

Research area: Algebraic and enumerative combinatorics

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PROGRAMMING LANGUAGES

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Matlab (proficient), Maple (proficient)

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IXL Learning

July 2013 - January 2015

Product Analyst

San Mateo, CA

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September 2008 - June 2013

Teaching Assistant

San Diego, CA

- Courses included Precalculus, Single and Multivariable Calculus, Linear Algebra, Differential Equations, and Mathematical Reasoning (proof writing)

UC San Diego

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Associate Instructor

San Diego, CA

- Instructor of record for a university-level Precalculus course

Johns Hopkins Center for Talented Youth Summers 2010 - 2012

Instructor

La Jolla, CA & Palo Alto, CA

- Taught intensive 3-week mathematics courses to gifted youth ages 10-12
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Program Assistant

La Jolla, CA

- Assisted in teaching Inventions, an intensive 3-week science course for gifted youth ages 8-10

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Summer 2008

Program Assistant

Northfield, MN

- Managed program logistics such as housing, food, weekend activities, and supply acquisition

Carleton College Department of Mathematics

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Summer 2006

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Crawfordsville, IN

- Completed a research project on the chromatic number of the zero-divisor graphs of the groups Z_n , resulting in a publication

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Duane, Adrian S., Garsia, Adriano, and Zabrocki, Michael, *A new "divv" arising from the two-part case of the shuffle conjecture*, *Journal of Algebraic Combinatorics*, published online June 26, 2012.

Duane, Adrian S. and Remmel, Jeff, *Minimal Overlapping Patterns in Colored Permutations*, *Electronic Journal of Combinatorics*, Volume 18, Issue 2, 2011.

Duane, A., *Proper Colorings and p-partite Structures in the Zero Divisor Graph*, *Rose-Hulman Journal of Undergraduate Mathematics*, Volume 7, Issue 2, 2006.

SELECTED TALKS

Counting Occurrences of Minimally Overlapping Patterns in Alternating Permutations Using the Maximum Packing Number, *Permutation Patterns*, Glasgow, Scotland, June 14, 2012.

Minimal Overlapping Patterns in Alternating Permutations, *Permutation Patterns*, San Luis Obispo, California, June 20, 2011.

A Ubiquitous Sequence: Catalan Numbers in Lattice Paths and Trees, invited speaker, Mills College, April 15, 2011.

REFERENCES

Jessica Morse

Sales Intern at Optimizely

Relationship: Colleague at IXL Learning

- Email: jessica.ilene.morse@gmail.com
- Phone: (404) 805-5154

Nina Wu

Educational Game Designer at MIND Research Institute

Relationship: Colleague at IXL Learning

- Email: ninawu88@gmail.com
- Phone: (239) 297-5604

Josh Gevirtz

Former Software Engineer at IXL Learning

Relationship: Colleague at IXL Learning

- Email: joshgev@gmail.com
- Phone: (765) 717-5302

Jeff Remmel

Professor of Mathematics at UC San Diego

Relationship: Dissertation advisor

- Email: jremmel@math.ucsd.edu

From: Vince Caminiti <vincecaminiti@bavc.org>
Sent: Wednesday, June 17, 2015 6:20 PM
To: Vince Caminiti <vince@bavc.org>
Cc: Jessenia Eliza <jess@bavc.org>; Training Counselors <counselors@bavc.org>
Bcc: adrian.scott.duane@gmail.com
Subject: BAVC Job Search Success Team Orientation
Attach: JSST Pre Assessment-6.docx

Dear TechSF clients,

Although much of your job search is done alone, evidence suggests that the chore can be easier when you do it as part of a team. As in sports, surrounding yourself with great people can enhance your ability to win. Likewise, in sales, a lot of people say *the best hunting is done in packs*.

A Job Search Success Team (JSST) is not a therapy or support group. Rather, it is a group of people committed to helping each other. This includes keeping members focused on key tasks, such as brainstorming, information sharing, networking, discussing common challenges and developing action items. In addition to helping job seekers strategize, teams also ensure that members stay focused and hold each other accountable for their jobsearch goals.

BAVC is starting to incubate self-directed job search success teams and we anticipate this proven team approach will lead to more confidence among job seekers, better search strategies, increased networking, more collaboration and a lot more resilience. The team atmosphere helps job-seekers uncover search tactics that they would have never thought of on their own - and the team helps keep everyone motivated, like having "workout buddies" helps with fitness goals.

If you would like to find out more, we will hold an informational session and orientation to Job Search Success Teams on:

Thursday 6/25, 10:00 AM - 12:00 PM @ BAVC

Space will be limited so to reserve a spot, please complete the attached Pre-Assessment (required for a reservation - no exceptions) and respond to this email with your commitment to attend.

Please don't commit to attend if you are unsure you can do so.



Job Search Success Teams



Join a peer networking and support group that will keep your job search on track and speed your time to landing a job by up to 25%.

The Job Search Success Team is not a therapy group, training session, or support group of the kind often used with job seekers. Instead it is:

- **a group of people committed to helping each other** in job search by keeping each other focused on key tasks and accountable for getting them done.
- **an advisory panel** that knows you and your search and can provide good answers to the questions that come up in job hunting.
- **an opportunity for job hunters to share information** and information sources, so everyone gets smarter about the job market.
- **a core network** for its members.
- **a project management team.**
- **a way to make the sometimes difficult job of job hunting easier** and more pleasant.

Don't Go it Alone

- **Accelerate your search**
- **Increase your network reach**
- **Action oriented searching**

Attend an orientation

When:

**Thursday June 25th
10:00 AM – 12:00 PM**

Where:

**BAVC
2727 Mariposa St
SF, CA 94110**

A large, light-colored pyramid with a grid pattern. The text 'STRENGTH IN NUMBERS' is written in bold, black, sans-serif capital letters across the middle of the pyramid.

**STRENGTH IN
NUMBERS**

--
Vince Caminiti
Tech Career Specialist
[Bay Area Video Coalition](#)
Direct Line: 415 558-2120
vince@bavc.org

Need ideas for your portfolio? Want help working on a project? Enroll today in Projects!
Choose from *InDesign, Illustrator, Photoshop, and AfterEffects*. Sign up today! [www.bavc.org](#)



Join three Bay Area media makers who have worked "behind bars," as they discuss the power storytelling holds for incarcerated individuals. Tickets are still available: [www.bavc.org](#)



Job Search Success Team Pre-Assessment

Please answer the questions below and return the completed assessment to vince@bavc.org no later than 24 hours prior to the initial orientation

Name: _____

1. What two things would you like to gain from this group?
 - a.
 - b.
2. What two things would you like to offer to this group?
 - a.
 - b.
3. How would you like this group to enhance your experience with your job search?
4. What are your thoughts about working with people in different industries and at different experience levels? What do you think the challenges might be?
5. What resources do you hope to use in this group (LinkedIn, news articles, workshop materials on specific topics, meetups, etc.)
6. Anything else we should know?

Exhibit 21-1:

Duane's application for a Front End Engineer position at
Study.com on January 13, 2015
(EEOC_000460-EEOC_000462; EEOC_000622-
EEOC_000623)

From: Scott Duane <adrian.scott.duane@gmail.com>
Sent: Tuesday, January 13, 2015 4:13 PM
To: ahood@study.com
Subject: Resume
Attach: tech_resume.pdf

Hi Ashley,

I'm following up on your LinkedIn message regarding the open positions on your content team. Attached is my updated resume. Looking forward to connecting further!

Best,

Scott

A. SCOTT DUANE

2303 Park Blvd, Apt 5 ◊ Oakland, CA 94606
(507) 581-4100 ◊ adrian.scott.duane@gmail.com

EDUCATION

- University of California, San Diego** *June 2013*
Ph.D. in Mathematics
GPA: 3.93
Research area: Algebraic and enumerative combinatorics
- Carleton College** *June 2007*
B.A. in Mathematics
GPA: 3.56
Magna cum laude graduate

WORK EXPERIENCE

- IXL Learning** July 2013 - January 2015
Product Analyst *San Mateo, CA*
- Managed the entire development cycle for K-12 math practice software, including brainstorming new skills, designing questions and explanations, writing specifications, testing, and debugging
 - Created new user interfaces, such as customized iPad and Android tablet keyboards and a sinusoidal graphing component
 - Aligned the IXL practice software with educational standards, including the Common Core
- UC San Diego** September 2008 - June 2013
Teaching Assistant *San Diego, CA*
- Courses included Precalculus, Single and Multivariable Calculus, Linear Algebra, Differential Equations, and Mathematical Reasoning (proof writing)
- UC San Diego** January 2012 - April 2012
Associate Instructor *San Diego, CA*
- Instructor of record for a university-level Precalculus course
- Johns Hopkins Center for Talented Youth** Summers 2010 - 2012
Instructor *La Jolla, CA & Palo Alto, CA*
- Taught intensive 3-week mathematics courses to gifted youth ages 10-12
 - Designed the curriculum for each course, heavy on hands-on lessons on advanced concepts such as fractal geometry, modular arithmetic, recurrence relations, and countability of sets
- Johns Hopkins Center for Talented Youth** Summer 2009
Program Assistant *La Jolla, CA*
- Assisted in teaching Inventions, an intensive 3-week science course for gifted youth ages 8-10
- Carleton College Summer Math Program for Women** Summer 2008
Program Assistant *Northfield, MN*
- Managed program logistics such as housing, food, weekend activities, and supply acquisition
- Carleton College Department of Mathematics** September 2007 - June 2008
Teaching Intern *Northfield, MN*

- Ran weekly problem-solving sessions, graded homework, and held office hours for Calculus I, Multivariable Calculus, and Introduction to Mathematics
- Assisted faculty in writing and grading exams and managing other course logistics

Wabash College*Undergraduate Researcher*

Summer 2006

Crawfordsville, IN

- Completed a research project on the chromatic number of the zero-divisor graphs of the groups Z_n , resulting in a publication

PUBLICATIONS

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Duane, Adrian S., Garsia, Adriano, and Zabrocki, Michael, *A new "inv" arising from the two-part case of the shuffle conjecture*, Journal of Algebraic Combinatorics, published online June 26, 2012.

Duane, Adrian S. and Remmel, Jeff, *Minimal Overlapping Patterns in Colored Permutations*, Electronic Journal of Combinatorics, Volume 18, Issue 2, 2011.

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SELECTED TALKS

Counting Occurrences of Minimally Overlapping Patterns in Alternating Permutations Using the Maximum Packing Number, Permutation Patterns, Glasgow, Scotland, June 14, 2012.

Minimal Overlapping Patterns in Alternating Permutations, Permutation Patterns, San Luis Obispo, California, June 20, 2011.

A Ubiquitous Sequence: Catalan Numbers in Lattice Paths and Trees, invited speaker, Mills College, April 15, 2011.

REFERENCES

Jessica Morse*Relationship: Colleague at IXL Learning*

Product Analyst at IXL Learning

- Email: jessica.ilene.morse@gmail.com
- Phone: (404) 805-5154

Nina Wu*Relationship: Colleague at IXL Learning*

Educational Game Designer at MIND Research Institute

- Email: ninawu88@gmail.com
- Phone: (239) 297-5604

Jeff Remmel*Relationship: Dissertation advisor*

Professor of Mathematics at UC San Diego

- Email: jremmel@math.ucsd.edu

Deanna Haunsperger*Relationship: Undergraduate advisor & former supervisor*

Professor of Mathematics at Carleton College

- Email: dhaunspe@carleton.edu
- Phone: (507) 222-4360

From: Ashley Hood <ahood@study.com>
Sent: Tuesday, January 13, 2015 4:42 PM
To: Scott Duane <adrian.scott.duane@gmail.com>
Subject: RE: Resume

Great – you are confirmed!

Ashley Hood, PHR
HR Manager
Study.com (formerly Remilon, LLC)
O: 650.962.1200 ext. 509 | F: 650.227.4939
ahood@study.com

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From: Scott Duane [mailto:adrian.scott.duane@gmail.com]
Sent: Tuesday, January 13, 2015 1:38 PM
To: Ashley Hood
Subject: Re: Resume

Hi Ashley,

Sure, I could talk with Kathryn at 10:30 on Thursday. My phone number is 507.581.4100. Thanks,

Scott

On Tue, Jan 13, 2015 at 1:28 PM, Ashley Hood <ahood@study.com> wrote:

Hi Scott,

Thank you so much for sending this over.

Are you available to chat with Kathryn on Thursday between either 10:30-Noon OR 2-4 pm?

Thanks,

Ashley Hood, PHR
HR Manager
Study.com (formerly Remilon, LLC)
O: 650.962.1200 ext. 509 | F: 650.227.4939
ahood@study.com

CONFIDENTIAL INFORMATION

E-mails from Study.com normally contain confidential information and are for the sole use of the intended recipient. Disclosure of the contents of this email to unauthorized third parties, distribution of this email or other unauthorized use of this email or its contents is strictly prohibited. If you have received this email in error or are no longer authorized to have access to its contents, you are instructed to immediately notify the

sender of the error and delete the e-mail, all attachments and all copies.

From: Scott Duane [mailto:adrian.scott.duane@gmail.com]

Sent: Tuesday, January 13, 2015 1:13 PM

To: ahood@study.com

Subject: Resume

Hi Ashley,

I'm following up on your LinkedIn message regarding the open positions on your content team. Attached is my updated resume. Looking forward to connecting further!

Best,

Scott

Exhibit 21-2:

Duane's application for a Product Pro position at Piazza
on January 13, 2015
(EEOC_000457-EEOC_000459)

From: Scott Duane <adrian.scott.duane@gmail.com>
Sent: Wednesday, January 14, 2015 2:29 PM
To: jobs@piazza.com
Subject: Product Pro application
Attach: tech_plus_resume.pdf

Hello,

I'm writing to apply for the position of Product Pro at Piazza.

In June 2013, I earned my PhD in math from UC San Diego. Since then, I've been designing K-12 practice software at IXL Learning. Although I've learned a great deal about the software development process during my time at IXL, I'm ready to move on to a position that is more broad and more creative.

I had the chance to use Piazza in a few of the courses I taught or TAed for at UCSD, and I found it to be a great tool for students in large, intimidating lecture classes. I love Piazza's mission of inclusivity for students who find themselves marginalized in traditional classrooms, and I would be incredibly excited to work towards furthering that mission.

I've attached my resume, and you can also take a look at my [LinkedIn profile](#) to learn a little more about my background.

Thanks for your time and consideration. I look forward to hearing from you soon. Best,

Scott Duane

A. SCOTT DUANE

2303 Park Blvd, Apt 5 ◊ Oakland, CA 94606
 (507) 581-4100 ◊ adrian.scott.duane@gmail.com

EDUCATION

University of California, San Diego

June 2013

Ph.D. in Mathematics

GPA: 3.93

Research area: Algebraic and enumerative combinatorics

Carleton College

June 2007

B.A. in Mathematics

GPA: 3.56

Magna cum laude graduate

TECHNICAL EXPERIENCE

IXL Learning

July 2013 - January 2015

*Product Analyst**San Mateo, CA*

- Managed the entire development cycle for K-12 math practice software, including brainstorming new skills, designing questions and explanations, writing specifications, testing, and debugging
- Created new user interfaces, such as customized iPad and Android tablet keyboards and a sinusoidal graphing component

UC San Diego

September 2008 - June 2013

*Teaching Assistant**San Diego, CA*

- Courses included Precalculus, Single and Multivariable Calculus, Linear Algebra, Differential Equations, and Mathematical Reasoning (proof writing)

UC San Diego

January 2012 - April 2012

*Associate Instructor**San Diego, CA*

- Instructor of record for a university-level Precalculus course

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*Instructor**La Jolla, CA & Palo Alto, CA*

- Taught intensive 3-week mathematics courses to gifted youth ages 10-12
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- Managed program logistics such as housing, food, weekend activities, and supply acquisition

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- Assisted faculty in writing and grading exams and managing other course logistics

Wabash College

Summer 2006

*Undergraduate Researcher**Crawfordsville, IN*

- Completed a research project on the chromatic number of the zero-divisor graphs of the groups Z_n , resulting in a publication

NON-TECHNICAL EXPERIENCE

Visible Bodies*Founder*January 2011 - present
San Diego, CA & Minneapolis, MN

- Produced narrated photography exhibits in two major cities showcasing the lives of transgender individuals
- Raised funds, solicited photographers, managed community relationships, maintained a fiscal sponsorship, and arranged exhibitions across the United States and in Europe

Transgress Press*Social Media Consultant*August 2013 - April 2014
Oakland, CA

- Maintained the social media presence for a grassroots publishing company, tripling its Facebook following to 1000+

Hillcrest Youth Center*Group Facilitator*March 2010 - June 2013
San Diego, CA

- Served as a mentor and discussion group facilitator at a drop-in center for LGBT teenagers

PUBLICATIONS

Duane, Adrian S., and Remmel, Jeff, *Pattern Matching Statistics in the Permutations S_n and the Alternating Permutations A_n for Minimally Overlapping Patterns*, doctoral dissertation, June 2013.

Duane, Adrian S., Garsia, Adriano, and Zabrocki, Michael, *A new "divv" arising from the two-part case of the shuffle conjecture*, *Journal of Algebraic Combinatorics*, published online June 26, 2012.

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Duane, A., *Proper Colorings and p -partite Structures in the Zero Divisor Graph*, *Rose-Hulman Journal of Undergraduate Mathematics*, Volume 7, Issue 2, 2006.

Duane, A. Scott, "Trans Men, Trans Women, and Surrendering the Sisterhood at Women's Colleges", *the Advocate*, October 27, 2014.

Duane, A. Scott, "Men Like Me," a chapter in the anthology *Manning Up: Trans Men on Finding Brotherhood, Family, and Themselves*, Transgress Press, June 2014.

REFERENCES

Jessica Morse*Relationship: Colleague at IXL Learning*

Product Analyst at IXL Learning

- Email: jessica.ilene.morse@gmail.com
- Phone: (404) 805-5154

Nina Wu*Relationship: Colleague at IXL Learning*

Educational Game Designer at MIND Research Institute

- Email: ninawu88@gmail.com
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Former Software Engineer at IXL Learning

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- Email: jremmel@math.ucsd.edu

Zander Keig*Relationship: Colleague at Transgress Press*

Licensed Clinical Social Worker at the Veterans' Administration

- Email: zander.keig@gmail.com
- Phone: (415) 504-7149

Exhibit 21-3:

Duane's application for a Research & Analytics Lead
position at Kizoom on January 26, 2015
(EEOC_000454-EEOC_000456)

From: Scott Duane <adrian.scott.duane@gmail.com>
Sent: Monday, January 26, 2015 2:44 PM
To: erica@kizoomlabs.com
Subject: Application for Research & Analytics Lead position
Attach: tech_resume.pdf

Hi Erica,

I saw your post on EdSurge for the position of Research & Analytics Lead at Kizoom. I've spent a good part of the last year designing the [IXL Learning](#) iPad app, and as part of that project I had a chance to check out the Brain Jump app. I absolutely love what you're doing -- your games are fun, engaging, and purposeful for kids.

To summarize my own background, I earned my PhD in math from UC San Diego in June 2013, and I've been working at IXL ever since. At IXL, I've designed quite a few of the skills offered in their Precalculus section, I revamped their mobile app keyboard, and I did a lot of work on making the site more accessible to students with disabilities. Although I've learned a great deal about the software development process at IXL, I'm now looking for a role that's more technically challenging and utilizes my math background more fully. The position at Kizoom sounds like a perfect opportunity.

I've attached my resume, and you can also check out my [LinkedIn profile](#) to learn a little more.

Thanks for your time and consideration. Best regards,

Scott Duane

A. SCOTT DUANE

2303 Park Blvd, Apt 5 ◊ Oakland, CA 94606
(507) 581-4100 ◊ adrian.scott.duane@gmail.com

EDUCATION

University of California, San Diego

June 2013

Ph.D. in Mathematics

GPA: 3.93

Research area: Algebraic and enumerative combinatorics

Carleton College

June 2007

B.A. in Mathematics

GPA: 3.56

Magna cum laude graduate

WORK EXPERIENCE

IXL Learning

July 2013 - January 2015

Product Analyst

San Mateo, CA

- Managed the entire development cycle for K-12 math practice software, including brainstorming new skills, designing questions and explanations, writing specifications, testing, and debugging
- Created new user interfaces, such as customized iPad and Android tablet keyboards and a sinusoidal graphing component
- Aligned the IXL practice software with educational standards, including the Common Core

UC San Diego

September 2008 - June 2013

Teaching Assistant

San Diego, CA

- Courses included Precalculus, Single and Multivariable Calculus, Linear Algebra, Differential Equations, and Mathematical Reasoning (proof writing)

UC San Diego

January 2012 - April 2012

Associate Instructor

San Diego, CA

- Instructor of record for a university-level Precalculus course

Johns Hopkins Center for Talented Youth

Summers 2010 - 2012

Instructor

La Jolla, CA & Palo Alto, CA

- Taught intensive 3-week mathematics courses to gifted youth ages 10-12
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Carleton College Summer Math Program for Women

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Northfield, MN

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Carleton College Department of Mathematics

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- Ran weekly problem-solving sessions, graded homework, and held office hours for Calculus I, Multivariable Calculus, and Introduction to Mathematics
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Wabash College*Undergraduate Researcher*

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- Completed a research project on the chromatic number of the zero-divisor graphs of the groups Z_n , resulting in a publication

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A Ubiquitous Sequence: Catalan Numbers in Lattice Paths and Trees, invited speaker, Mills College, April 15, 2011.

REFERENCES

Jessica Morse*Relationship: Colleague at IXL Learning*

Product Analyst at IXL Learning

- Email: jessica.ilene.morse@gmail.com
- Phone: (404) 805-5154

Nina Wu*Relationship: Colleague at IXL Learning*

Educational Game Designer at MIND Research Institute

- Email: ninawu88@gmail.com
- Phone: (239) 297-5604

Jeff Remmel*Relationship: Dissertation advisor*

Professor of Mathematics at UC San Diego

- Email: jremmel@math.ucsd.edu

Deanna Haunsperger*Relationship: Undergraduate advisor & former supervisor*

Professor of Mathematics at Carleton College

- Email: dhaunspe@carleton.edu
- Phone: (507) 222-4360

Exhibit 21-4:

Duane's application for a Student Data Analyst position at
Caliber Schools on February 1, 2015
(EEOC_000449-EEOC_000452; EEOC_000922-
EEOC_000924)

From: Scott Duane <adrian.scott.duane@gmail.com>
Sent: Sunday, February 1, 2015 9:34 PM
To: careers@caliberschools.org
Subject: Application for Student Data Analyst
Attach: tech_resume.pdf; caliber cover letter.pdf

Hello,

I'm writing to apply for the position of Student Data Analyst. Attached herein is my cover letter and resume. You can also take a look at my [LinkedIn profile](#) for a little more information about my professional background.

Thanks for your time. Best regards,

Scott Duane

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Relationship: Colleague at IXL Learning

- Email: jessica.ilene.morse@gmail.com
- Phone: (404) 805-5154

Nina Wu Educational Game Designer at MIND Research Institute
Relationship: Colleague at IXL Learning

- Email: ninawu88@gmail.com
- Phone: (239) 297-5604

Josh Gevirtz Former Software Engineer at IXL Learning
Relationship: Colleague at IXL Learning

- Email: joshgev@gmail.com
- Phone: (765) 717-5302

Jeff Remmel Professor of Mathematics at UC San Diego
Relationship: Dissertation advisor

- Email: jremmel@math.ucsd.edu

Deanna Haunsperger Professor of Mathematics at Carleton College
Relationship: Undergraduate advisor & former supervisor

- Email: dhaunspe@carleton.edu
- Phone: (507) 222-4360

February 1, 2015
Hiring Manager
Caliber Schools
5100 Potrero Avenue
Richmond, CA 94804

Dear Hiring Manager,

I'm writing to apply for the position of Student Data Analyst at your organization. I saw your job posting on EdSurge.com, and I was immediately enthused by Caliber's mission to create high-quality Bay Area schools with personalized, technologically rigorous curricula for its students.

I earned my PhD in Mathematics from the University of California, San Diego in June 2013, and immediately began working at IXL Learning, an educational technology company that creates math practice software for K-12 students. At IXL, I've designed and overseen the implementation of major components of our website, including a significant portion of the skills in our Precalculus section, an improvement to our accessibility options for students with print-related disabilities, and a complete overhaul of our mobile app keyboard.

Working at IXL has given me a deep understanding of the ways in which K-12 students utilize technology in the classroom, as well as some insights into the kinds of tools that teachers and parents find useful in aiding these students in their educations. This practical knowledge, along with my extensive background in mathematics, would make me a perfect candidate for this position.

I'm a strong believer in innovation in education, and especially in utilizing new tools like data analysis to better the experiences of students, teachers, and parents alike. I would be incredibly excited to use my quantitative skills to aid in Caliber's success.

Thank you for considering my application. I look forward to hearing from you soon.

Sincerely yours,

Scott Duane

2303 Park Blvd, Apt 5, Oakland, CA 94606 507-581-4100 adrian.scott.duane@gmail.com

From: Chayla Gibson <chayla@caliberschools.org>
Sent: Monday, February 9, 2015 6:04 PM
To: Scott Duane <adrian.scott.duane@gmail.com>
Subject: Re: Caliber Schools

Great. Thanks Scott, we'll see you Thursday at 2.

On Mon, Feb 9, 2015 at 2:59 PM, Scott Duane <adrian.scott.duane@gmail.com> wrote:
Hi Chayla,

Thursday at 2 works for me. I'll be coming to the school. Thanks,

Scott

On Mon, Feb 9, 2015 at 2:39 PM, Chayla Gibson <chayla@caliberschools.org> wrote:
Hi Scott,

How about Thursday at 2? Will you come to the school (5100 Potrero in Richmond), or is this a phone call?

Thanks in advance!
Chayla

----- Forwarded message -----

From: Markus Mullarkey <markus@caliberschools.org>
Date: Mon, Feb 9, 2015 at 12:02 PM
Subject: Re: Caliber Schools
To: Scott Duane <adrian.scott.duane@gmail.com>, Chayla Gibson <chayla@caliberschools.org>

Adding Chayla...

On Mon, Feb 9, 2015 at 11:47 AM, Scott Duane <adrian.scott.duane@gmail.com> wrote:
Hi Markus,

Ok, no worries. Would sometime on Thursday afternoon work?

Scott

On Mon, Feb 9, 2015 at 11:39 AM, Markus Mullarkey <markus@caliberschools.org> wrote:
Hi Scott,

Just connected up with Ron to figure out next steps for you and he meeting this week. As it turns out, he can't actually make the 2:30 time work on Wednesday, so we'll need to find another time. I'm adding Chayla to the thread so she can help find a time that works for both of you.

Thanks,
Markus

On Thu, Feb 5, 2015 at 12:38 PM, Ron Beller <ron@rbjm.net> wrote:

Hi - sorry about this but just got a command performance to meet the school district at 9am. i could meet monday anytime between 11-3. would that work. or tuesday at 2:30pm or wednesday between 9 and noon. do any of those work?

On Thu, Feb 5, 2015 at 9:54 AM, Scott Duane <adrian.scott.duane@gmail.com> wrote:
Hi Ron,

Sounds great. See you then.

Scott

On Wed, Feb 4, 2015 at 8:46 PM, Ron Beller <ron@rbjm.net> wrote:
Tuesday morning works. 9am?
Caliber beta academy. 5100 Potrero ave. Richmond.

Ron Beller
[415 987-4351](tel:4159874351)

On Feb 3, 2015, at 21:21, Scott Duane <adrian.scott.duane@gmail.com> wrote:

Hi Ron,

Great to hear from you. I'm available to meet this Friday afternoon after 2pm, Monday after 3pm, or Tuesday morning before 11am. If none of those times work, let me know and I'm happy to be flexible.

Looking forward to speaking with you. Best,

Scott

On Tue, Feb 3, 2015 at 1:54 PM, Ron Beller Caliber <ron@caliberschools.org> wrote:
Thank you for your interest in Caliber. We would love to meet. Could you throw out some times that could work for you to come to Richmond to meet with us?

Best

--

Ron Beller
Co-Founder and CEO
Caliber Schools
[\(415\) 987-4351](tel:4159874351)

Ron Beller
[415 987 4351](tel:4159874351)

Markus Mullarkey

CaliberSchools

Education Reimagined

[\(415\) 860-4963](tel:4158604963)

markus@caliberschools.org

Markus Mullarkey

CaliberSchools

Education Reimagined

(415) 860-4963

markus@caliberschools.org

Chayla Gibson

CaliberSchools

Education Reimagined

(510)685-9858

chayla@caliberschools.org

--

Chayla Gibson

CaliberSchools

Education Reimagined

(510)685-9858

chayla@caliberschools.org

Exhibit 21-5:

Duane's application for a Data Engineering position at
EdSurge on March 19, 2015
(EEOC_000438-EEOC000440)

From: Scott Duane <adrian.scott.duane@gmail.com>
Sent: Thursday, March 19, 2015 2:21 PM
To: agustin@edsurge.com
Subject: Data engineering internship
Attach: tech_resume.pdf

Hi Agustin,

I'm writing to apply for the Data Engineering internship available at EdSurge.

After a year and a half as a designer at IXL Learning, I'm seeking a more challenging position within the tech world. I'd like to see if data engineering would be a good career fit for me, so an internship in such a role would be an ideal way to get some industry experience handling both data and code.

I have an excellent aptitude for quantitative learning, including a PhD in pure math and a strong (amateur) programming background. I also have a deep love for and familiarity with the ed tech space, having worked in it for some time now. I'm always eager to learn new skills and tackle challenging problems.

I've attached my resume, and you can also visit my [LinkedIn profile](#).

Thanks for your time and best regards,

Scott Duane

A. SCOTT DUANE

1538 Lexington Ave ◊ El Cerrito, CA 94530
 (507) 581-4100 ◊ adrian.scott.duane@gmail.com

EDUCATION

University of California, San Diego

June 2013

Ph.D. in Mathematics

GPA: 3.93

Research area: Algebraic and enumerative combinatorics

Carleton College

June 2007

B.A. in Mathematics

GPA: 3.56

Magna cum laude graduate**PROGRAMMING LANGUAGES**

Java (fluent), Ruby (proficient), Python (proficient), Swift (proficient), HTML/CSS (proficient), R (proficient), Matlab (proficient), Maple (proficient)

WORK EXPERIENCE

IXL Learning

July 2013 - January 2015

*Product Analyst**San Mateo, CA*

- Managed the entire development cycle for K-12 math practice software, including brainstorming new skills, designing questions and explanations, writing specifications, testing, and debugging
- Created new user interfaces, such as customized iPad and Android tablet keyboards and a sinusoidal graphing component
- Aligned the IXL practice software with educational standards, including the Common Core

UC San Diego

September 2008 - June 2013

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- Instructor of record for a university-level Precalculus course

Johns Hopkins Center for Talented Youth

Summers 2010 - 2012

*Instructor**La Jolla, CA & Palo Alto, CA*

- Taught intensive 3-week mathematics courses to gifted youth ages 10-12
- Designed the curriculum for each course, heavy on hands-on lessons on advanced concepts such as fractal geometry, modular arithmetic, recurrence relations, and countability of sets

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Summer 2009

*Program Assistant**La Jolla, CA*

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Summer 2006

*Undergraduate Researcher**Crawfordsville, IN*

- Completed a research project on the chromatic number of the zero-divisor graphs of the groups Z_n , resulting in a publication

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REFERENCES

Jessica Morse

Product Analyst at IXL Learning

Relationship: Colleague at IXL Learning

- Email: jessica.ilene.morse@gmail.com
- Phone: (404) 805-5154

Nina Wu

Educational Game Designer at MIND Research Institute

Relationship: Colleague at IXL Learning

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- Phone: (239) 297-5604

Josh Gevirtz

Former Software Engineer at IXL Learning

Relationship: Colleague at IXL Learning

- Email: joshgev@gmail.com
- Phone: (765) 717-5302

Jeff Remmel

Professor of Mathematics at UC San Diego

Relationship: Dissertation advisor

- Email: jremmel@math.ucsd.edu

Exhibit 21-6:

Duane's application for an Associate Software Developer
position at Salesforce on March 25, 2015
(EEOC_0006000)

From: Jobs Site Guest User <sfdcapp_gacks@salesforce.com>
Sent: Wednesday, March 25, 2015 2:41 PM
To: adrian.scott.duane@gmail.com
Subject: salesforce.com Job Application - Associate Software Developer, Matrix



Dear Scott Duane,

Thank you for submitting your resume/CV to salesforce.com through our Careers website.

We will review your resume to determine if your qualifications are a match for the Associate Software Developer, Matrix position. If there is a fit, we will contact you to discuss next steps in the process. We will keep your resume/CV on file in the event another position opens up which matches your background.

We appreciate your interest in salesforce.com and wish you success in your job search.

This is an auto-generated message from the salesforce.com careers site. Please DO NOT REPLY to this message.

Regards,

salesforce.com Recruiting

Exhibit 21-7:

Duane's application for a software or data position at
Khan Academy on March 26, 2015
(EEOC_000432-EEOC_000434)

From: Scott Duane <adrian.scott.duane@gmail.com>
Sent: Thursday, March 26, 2015 5:52 PM
To: kayla@khanacademy.org
Subject: Re: Application for Product Manager - Khan Academy
Attach: tech_resume.pdf

Hi Kayla,

Thank you for the response.

I realize you're busy, but I'm wondering if you think there are any positions at Khan, including internships, that you'd consider me for. I have a lot of respect for your organization, and in addition I'm attempting to make a transition into a more technically challenging position in the tech industry. I'm exploring both software engineering and data science positions.

For your convenience, I've attached an updated resume. If you think my background may be a fit for a software or data position at Khan, let me know.

Thanks again for your time,

Scott

On Thu, Mar 26, 2015 at 11:45 AM, <kayla@khanacademy.org> wrote:

Hi Scott,

Thank you for your interest in Khan Academy. We appreciate the time you spent to apply for a position. As a very small team, we aren't able to interview or hire all of the extremely talented candidates that apply, and unfortunately we won't be able to move forward with your candidacy at this time. We are truly grateful for your interest in Khan Academy and wish you all of the best in your job search and in your future endeavors.

There are other ways to get involved and help if you'd like to contribute to Khan Academy in your spare time. To learn more, check out this link: khanacademy.org/contribute

Warmest regards,
Kayla

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Jeff Remmel

Professor of Mathematics at UC San Diego

Relationship: Dissertation advisor

- Email: jremmel@math.ucsd.edu

Exhibit 21-8:

Duane's application for a Math Curriculum and
Assessment Designer position at Edulastic on April 4,
2015

(EEOC_000421-EEOC_000423; EEOC_000607).

From: Scott Duane <adrian.scott.duane@gmail.com>
Sent: Saturday, April 4, 2015 4:30 PM
To: support@edulastic.com
Subject: Application for Math Curriculum and Assessment Designer
Attach: tech_resume.pdf

Hi,

I saw your posting on EdSurge for the Math Curriculum and Assessment Designer, and I think I'd be a great fit.

I spent a year and a half at IXL Learning designing high quality, adaptive high school math content. Through that position, I gained a strong understanding of the Common Core standards, the ed tech space, and user experience best practices. Additionally, I have a PhD in math from UC San Diego with an extensive and varied teaching background, from elementary school to the college level.

I've attached my resume, and you can also have a look at my [LinkedIn profile](#). Feel free to contact me by email or phone at 507.581.4100.

Best,

Scott Duane

A. SCOTT DUANE

1538 Lexington Ave ◊ El Cerrito, CA 94530
 (507) 581-4100 ◊ adrian.scott.duane@gmail.com

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September 2008 - June 2013

*Teaching Assistant**San Diego, CA*

- Courses included Precalculus, Single and Multivariable Calculus, Linear Algebra, Differential Equations, and Mathematical Reasoning (proof writing)

UC San Diego

January 2012 - April 2012

*Associate Instructor**San Diego, CA*

- Instructor of record for a university-level Precalculus course

Johns Hopkins Center for Talented Youth

Summers 2010 - 2012

*Instructor**La Jolla, CA & Palo Alto, CA*

- Taught intensive 3-week mathematics courses to gifted youth ages 10-12
- Designed the curriculum for each course, heavy on hands-on lessons on advanced concepts such as fractal geometry, modular arithmetic, recurrence relations, and countability of sets

Johns Hopkins Center for Talented Youth

Summer 2009

*Program Assistant**La Jolla, CA*

- Assisted in teaching Inventions, an intensive 3-week science course for gifted youth ages 8-10

Carleton College Summer Math Program for Women

Summer 2008

*Program Assistant**Northfield, MN*

- Managed program logistics such as housing, food, weekend activities, and supply acquisition

Carleton College Department of Mathematics

September 2007 - June 2008

Teaching Intern

Northfield, MN

- Ran weekly problem-solving sessions, graded homework, and held office hours for Calculus I, Multivariable Calculus, and Introduction to Mathematics
- Assisted faculty in writing and grading exams and managing other course logistics

Wabash College

Summer 2006

Undergraduate Researcher

Crawfordsville, IN

- Completed a research project on the chromatic number of the zero-divisor graphs of the groups Z_n , resulting in a publication

PUBLICATIONS

Duane, Adrian S., and Remmel, Jeff, *Pattern Matching Statistics in the Permutations S_n and the Alternating Permutations A_n for Minimally Overlapping Patterns*, doctoral dissertation, June 2013.

Duane, Adrian S., Garsia, Adriano, and Zabrocki, Michael, *A new "div" arising from the two-part case of the shuffle conjecture*, Journal of Algebraic Combinatorics, published online June 26, 2012.

Duane, Adrian S. and Remmel, Jeff, *Minimal Overlapping Patterns in Colored Permutations*, Electronic Journal of Combinatorics, Volume 18, Issue 2, 2011.

Duane, A., *Proper Colorings and p -partite Structures in the Zero Divisor Graph*, Rose-Hulman Journal of Undergraduate Mathematics, Volume 7, Issue 2, 2006.

SELECTED TALKS

Counting Occurrences of Minimally Overlapping Patterns in Alternating Permutations Using the Maximum Packing Number, Permutation Patterns, Glasgow, Scotland, June 14, 2012.

Minimal Overlapping Patterns in Alternating Permutations, Permutation Patterns, San Luis Obispo, California, June 20, 2011.

A Ubiquitous Sequence: Catalan Numbers in Lattice Paths and Trees, invited speaker, Mills College, April 15, 2011.

REFERENCES

Jessica Morse

Product Analyst at IXL Learning

Relationship: Colleague at IXL Learning

- Email: jessica.ilene.morse@gmail.com
- Phone: (404) 805-5154

Nina Wu

Educational Game Designer at MIND Research Institute

Relationship: Colleague at IXL Learning

- Email: ninawu88@gmail.com
- Phone: (239) 297-5604

Josh Gevirtz

Former Software Engineer at IXL Learning

Relationship: Colleague at IXL Learning

- Email: joshgev@gmail.com
- Phone: (765) 717-5302

Jeff Remmel

Professor of Mathematics at UC San Diego

Relationship: Dissertation advisor

- Email: jremmel@math.ucsd.edu

From: Edulastic Support Team <support@edulastic.com>
Sent: Saturday, April 4, 2015 4:30 PM
To: Scott Duane <adrian.scott.duane@gmail.com>
Subject: [Request received] Application for Math Curriculum and Assessment Designer

##- Please type your reply above this line -##

Your request (369) has been received and is being reviewed by our support staff.

If you're looking for FAQ resources, tips and tricks, or information on how to navigate Edulastic's app--please take a look at our new HELP CENTER: <https://edulastic.zendesk.com/>

To add additional comments, reply to this email.

 **Scott Duane**
Apr 4, 13:30

Hi,

I saw your posting on EdSurge for the Math Curriculum and Assessment Designer, and I think I'd be a great fit.

I spent a year and a half at IXL Learning designing high quality, adaptive high school math content. Through that position, I gained a strong understanding of the Common Core standards, the ed tech space, and user experience best practices. Additionally, I have a PhD in math from UC San Diego with an extensive and varied teaching background, from elementary school to the college level.

I've attached my resume, and you can also have a look at my LinkedIn profile (https://www.linkedin.com/profile/public-profile-settings?trk=prof-edit-edit-public_profile). Feel free to contact me by email or phone at 507.581.4100.

Best,

Scott Duane

Attachment(s)
[tech_resume.pdf](#)

This email is a service from Edulastic. Delivered by [Zendesk](#).

Message-Id:FM3JKPNK_552049cea89c1_55a83fd4050cd320117185_sprut

Exhibit 21-9:

Duane's application for a Software Engineer position at
Honk on November 11, 2015
(EEOC_000403-EEOC_000409)

From: Scott Duane <adrian.scott.duane@gmail.com>
Sent: Wednesday, November 11, 2015 1:46 PM
To: applyathon@gmail.com
Subject: Honk application
Attach: Careers With HONK.pdf, Honk cover letter.pdf

CAREERS

Software Engineer - Full Stack - ROR

at Honk ([View all jobs](#))

Los Angeles

HONK is the on-demand mobile app for tow, tire change, jump start, fuel and lock out services. We are well funded by top tier VCs working out of a brand new creative office space in a roadside services market with untapped and massive potential. We've doubled our headcount from 25 to 50 in the past two months and aim to double again by end of year. We love data and anything that helps drive intelligent decisions.

We are looking for a versatile **Software Engineer** who can do everything - from building mobile web & iOS apps and working on our back-end RoR system and APIs to interfacing with our in-vehicle OBD2/GPS devices. You need to be able to hit the ground running in our relaxed yet fast-paced environment - we are data driven, iterate quickly and push new code every day.

Responsibilities

- Work with our CTO to design & architect new products & features. We are a new startup, so you have a clean slate to build it right.
- Build out our back-end RoR app.
- Work with our UI/UX guru to extend our existing mobile web app and create new, compelling web experiences.
- Design & implement mobile apps on iOS/Android. We currently use Phonegap, but we are looking to go native.

Preferred Experience

- Two plus years developing highly dynamic web applications.
- Solid software engineering skills in an agile environment.
- Experience with multiple of the following, and the ability to quickly pick up new technologies & skills:
 - Ruby on Rails apps & RESTful APIs.
 - HTML + Javascript, especially on mobile devices.
 - Mobile iOS/Android apps.
 - Telephony apps built on Twilio or similar services.
 - Real-time, location based systems.
 - SQL & NoSQL databases - PostgreSQL & Redis.
 - Scalability & performance management of large scale systems.

- Solid OO design skills.
- Experience with all the usual tools (git, pivotal tracker)

Why work at HONK

- Competitive compensation with multiple medical/dental/vision package to fit your needs
- Food/shopping/theater discounts, free drinks, snacks, and a lot more
- Unlimited vacation policy; work hard and take time when you need it
- A colorful/creative work environment in the heart of the Westside
- Work with team dedicated to building a better future for drivers everywhere and making HONK a top company to work for with an unrivaled culture

Apply for this Job

* Required

(Optional)

First Name * Scott

Last Name * Duane

Email * adrian.scott.duane@gmail.com

Phone 5075814100

Location (City) * Oakland, CA

Resume/CV *  ScottDuaneResume.pdf 

Cover Letter  Honk cover letter.pdf 

LinkedIn Profile

www.linkedin.com/in/sduane

Website

scott.pink

How did you hear about this job?

Fellow App Academy student



0000

DOWNLOAD HONK



<https://itunes.apple.com/us/app/honk-tow-roadside-assistance/id911206852?ls=1&mt=8>
<https://play.google.com/store/apps/details?id=com.roadstruck.mobile>

CONNECT WITH US



<https://www.facebook.com/honkforhelp>
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<https://www.pinterest.com/honkforhelp/>

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HELP

<https://www.honkforhelp.com/faq>
<https://www.honkforhelp.com/foi>
<https://www.honkforhelp.com/usa>
<https://www.honkforhelp.com/support>
<https://www.honkforhelp.com/terms>

COMPANY

<https://www.honkforhelp.com/about>
<https://www.honkforhelp.com/careers>
<https://www.honkforhelp.com/partners>

SERVICES

<https://www.honkforhelp.com/towing>
<https://www.honkforhelp.com/flatbed>
<https://www.honkforhelp.com/extra>

- [Business development](https://www.honkforhelp.com/business-development) (<https://www.honkforhelp.com/business-development/>)
- <http://business.honkforhelp.com/>
- [and-conditions/](https://www.honkforhelp.com/and-conditions/)
- [Location services terms](https://www.honkforhelp.com/location-services-terms-conditions/) (<https://www.honkforhelp.com/location-services-terms-conditions/>)
- [Press](https://www.honkforhelp.com/press/) (<https://www.honkforhelp.com/press/>)
- [Tire change](https://www.honkforhelp.com/tire-change/) (<https://www.honkforhelp.com/tire-change/>)
- [services-terms-conditions/](https://www.honkforhelp.com/services-terms-conditions/)
- <http://www.honktechnologies.com/news/>
- [change/](https://www.honkforhelp.com/change/)
- [conditions/](https://www.honkforhelp.com/conditions/)
- [f=news\)](https://www.honkforhelp.com/f-news/)
- [Jump start](https://www.honkforhelp.com/jump-start/) (<https://www.honkforhelp.com/jump-start/>)
- [Privacy policy](https://www.honkforhelp.com/privacy-policy/) (<https://www.honkforhelp.com/privacy-policy/>)
- [locations](https://www.honkforhelp.com/locations/) (<https://www.honkforhelp.com/locations/>)
- [looking out](https://www.honkforhelp.com/looking-out/) (<https://www.honkforhelp.com/looking-out/>)
- [Contact](https://www.honkforhelp.com/contact/) (<https://www.honkforhelp.com/contact/>)
- [out/](https://www.honkforhelp.com/out/)
- [Stuck in ditch](https://www.honkforhelp.com/stuck-in-ditch/) (<https://www.honkforhelp.com/stuck-in-ditch/>)
- [in-ditch/](https://www.honkforhelp.com/in-ditch/)
- [Roadside assistance](https://www.honkforhelp.com/roadside-assistance/) (<https://www.honkforhelp.com/roadside-assistance/>)
- [assistance/](https://www.honkforhelp.com/assistance/)
- [Out of fuel](https://www.honkforhelp.com/out-of-fuel/) (<https://www.honkforhelp.com/out-of-fuel/>)
- [of-fuel/](https://www.honkforhelp.com/of-fuel/)

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 adrian.scott.duane@gmail.com  (507) 581-4100  170 Vernon Terrace, Suite 2, Oakland, CA 94610

Dear Hiring Manager,

I'm a software developer in the San Francisco Bay Area with expertise in Ruby on Rails and Javascript. I'm interested in applying for the position of Full Stack Engineer at Honk.

You can see an example of my work at *RocketRide*, a fictional rideshare app for listing and reserving spaceships. The app is built with React.js using the unidirectional architectural design pattern, Flux. Additionally, it uses the Cloudinary API to upload and store user profile pictures and spacecraft photos. Query requests are kept to a minimum by retrieving all necessary data on login, and then managing and filtering that data using functions in the various data stores.

Before focusing on software development, I worked at an educational technology company, IXL Learning, where I designed major pieces of the math practice section of the website. I collaborated with engineers on the implementation, giving me an empathetic view of the development process both from the engineers' and the designers' perspectives.

Additionally, I have experience learning challenging quantitative material. I earned a PhD in math from the University of California, San Diego. During that process, I was exposed to a wide array of mathematical fields, and published several papers on original research I conducted as a graduate student.

I would be excited to work on Honk's product, which provides a practical, much-needed service to people's everyday lives. With my coding background and ability to learn quickly, I believe I would be a great asset to Honk's team.

You can find more information on me and my projects in the attached resume, or from my LinkedIn and Github profiles.

Thank you for your time. I look forward to hearing from you soon. Best regards,

Scott Duane

 scottduane.github.io

 www.github.com/scottduane

 www.linkedin.com/in/sduane

Exhibit 21-10:

Duane's application for Backend Engineer at Persist IQ
on November 11, 2015
(EEOC_000410-EEOC_000413)

From: Scott Duane <adrian.scott.duane@gmail.com>
Sent: Wednesday, November 11, 2015 1:45 PM
To: applyathon@gmail.com
Subject: PersistIQ application
Attach: PersistIQ - Backend Engineer.pdf

Cover letter (not visible in the field):

Dear Hiring Manager,

I'm a software developer in the San Francisco Bay Area with expertise in Ruby on Rails and Javascript. I'm interested in applying for the position of Backend Engineer at PersistIQ.

You can see an example of my work at RocketRide (<http://rocketride.space>), a fictional rideshare app for listing and reserving spaceships. The app is built with React.js using the unidirectional architectural design pattern, Flux. Additionally, it uses the Cloudinary API to upload and store user profile pictures and spacecraft photos. Query requests are kept to a minimum by retrieving all necessary data on login, and then managing and filtering that data using functions in the various data stores.

Before focusing on software development, I worked at an educational technology company, IXL Learning, where I designed major pieces of the math practice section of the website. I collaborated with engineers on the implementation, giving me an empathetic view of the development process both from the engineers' and the designers' perspectives.

Additionally, I have experience learning challenging quantitative material. I earned a PhD in math from the University of California, San Diego. During that process, I was exposed to a wide array of mathematical fields, and published several papers on original research I conducted as a graduate student.

I would be very excited to work on the innovative, data-driven sales products that provides. With my background in coding, industry experience in tech, and strong quantitative instincts, I believe I would be a great asset to the team.

Thank you for your time. I look forward to hearing from you soon. Best regards,

Scott Duane

PersistIQ

Backend Engineer

SF / BAY AREA ENGINEERING FULL-TIME

SUBMIT YOUR APPLICATION

Resume/CV

Full name *



Success!

A. Scott Duane

Email *

adrian.scott.duane@gmail.com

Phone

(507) 581-4100

Current company

LINKS

LinkedIn URL

www.linkedin.com/in/sduane

Other link you'd like to share
(Twitter, Github, etc...) URL

www.github.com/scottduane

YOUR WORK

We'd love to see anything
you've built or worked on
(links)

rocketride.space, scottduane.github.io/LangtonsAnt

What have you enjoyed
working on most?

I recently built Langton's Ant, a cellular automata engine, in Javascript. The purpose of this project is to create a fun, engaging resource that math teachers can use in the classroom to teach kids about discrete mathematics. I enjoyed working on this because it gave me a chance to hone my Javascript skills, and was also for a purpose that I'm really passionate about.

ADDITIONAL INFORMATION

rideshare app for listing and reserving spaceships. The app is built with React.js using the unidirectional architectural design pattern, Flux. Additionally, it uses the Cloudinary API to upload and store user profile pictures and spacecraft photos. Query requests are kept to a minimum by retrieving all necessary data on login, and then managing and filtering that data using functions in the various data stores.

[PersistIQ Home Page](#)

Jobs powered by  LEVER

Exhibit 21-11:

Duane's application for a Full Stack Engineer position at
Sensor Tower on November 11, 2015
(EEOC_000414-EEOC_000416)

From: Scott Duane <adrian.scott.duane@gmail.com>
Sent: Wednesday, November 11, 2015 1:33 PM
To: jobs@sensortower.com
Bcc: applyathon@gmail.com
Subject: Application for Full Stack Engineer Position
Attach: Sensor Tower cover letter.pdf; ScottDuaneResume.pdf

Hello,

I'm writing to apply for the position of Full Stack Engineer at your company. Attached you can find my resume and cover letter.

Best regards,

Scott Duane

 adrian.scott.duane@gmail.com  (507) 581-4100  170 Vernon Terrace, Suite 2, Oakland, CA 94610

Dear Hiring Manager,

I'm a software developer in the San Francisco Bay Area with expertise in Ruby on Rails and Javascript. I'm interested in applying for the position of Full Stack Engineer at Sensor Tower.

You can see an example of my work at RocketRide, a fictional rideshare app for listing and reserving spaceships. The app is built with React.js using the unidirectional architectural design pattern, Flux. Additionally, it uses the Cloudinary API to upload and store user profile pictures and spacecraft photos. Query requests are kept to a minimum by retrieving all necessary data on login, and then managing and filtering that data using functions in the various data stores.

Before focusing on software development, I worked at an educational technology company, IXL Learning, where I designed major pieces of the math practice section of the website. I collaborated with engineers on the implementation, giving me an empathetic view of the development process both from the engineers' and the designers' perspectives.

Additionally, I have experience learning challenging quantitative material. I earned a PhD in math from the University of California, San Diego. During that process, I was exposed to a wide array of mathematical fields, and published several papers on original research I conducted as a graduate student.

I would be very excited to work in an environment like Sensor Tower that utilizes big data in new and innovative ways. With my background in coding and strong quantitative instincts, I believe I would be a great asset to the team.

You can find more information on me and my projects in the attached resume, or from my LinkedIn and Github profiles.

Thank you for your time. I look forward to hearing from you soon. Best regards,

Scott Duane

 scottduane.github.io

 www.github.com/scottduane

 www.linkedin.com/in/sduane

A. Scott Duane✉ adrian.scott.duane@gmail.com

☎ (507) 581-4100

🏠 170 Vernon Terrace, Suite 2, Oakland, CA 94610

Project**RocketRide**Live • [GitHub](#)

App for organizing (fictional) rideshares on spacecraft of all types, built with Ruby on Rails and React.js

- Uses the Flux design pattern to manage AJAX queries, controller actions, and frontend rendering
- Implements the Cloudinary API to upload and store user profile and spacecraft photos

Langton's AntLive • [GitHub](#)

A cellular automata engine, written in Javascript and using Chris Langton's 1986 behavioral rules

- Defines the various pieces of engine in a modular way, allowing for easy and efficient generalization of the original concept
- Utilizes the HTML Canvas library for clean, browser-agnostic behavior

Chess[GitHub](#)

Built in Ruby and designed to be played in the console

- Implements the minimax algorithm with adjustable depth to create an AI opponent

Skills

Ruby

Javascript

HTML/CSS

jQuery

RSpec

git

Ruby on Rails

React

Flux

SQL

Java

R

Experience**San Diego LGBT Pride**

April 2015 - July 2015

Wordpress Development Intern

Remote

- Built the Accessibility section of the San Diego LGBT Pride website, using the Wordpress platform
- Collaborated with a blind staff member to ensure that the site was robustly screen reader-friendly, exceeding the W3C Web Accessibility Standards

IXL Learning

July 2013 - January 2015

Product Analyst

San Mateo, CA

- Managed the development cycle for K-12 math practice software, from writing specifications with the analyst team to collaborating with the engineering team on implementation
- Designed new user interfaces, including a customized iPad keyboard and a sinusoidal graphing interface

Education**App Academy**

August 2015 - November 2015

Full Stack Web Development Course

San Francisco, CA

University of California, San Diego

September 2008 - June 2013

PhD, Mathematics (GPA 3.93)

La Jolla, CA

Research area: Algebraic and enumerative combinatorics

Dissertation: *Pattern Matching Statistics in the Permutations S_n and the Alternating Permutations A_n for Minimally Overlapping Patterns***Carleton College**

September 2003 - June 2007

BA, Mathematics (GPA 3.56, *magna cum laude*)📁 [scottduane.github.io](https://github.com/scottduane)🌐 www.github.com/scottduane🌐 www.linkedin.com/in/sduane

Exhibit 21-12:

Duane's application for a Ruby on Rails Developer position at Customer Lobby on November 14, 2015
(EEOC_000401-EEOC_000402)

From: Scott Duane <adrian.scott.duane@gmail.com>
Sent: Saturday, November 14, 2015 8:04 PM
To: resume@customerlobby.com
Subject: Rails Engineer - SF Bay Area
Attach: ScottDuaneResume.pdf

Dear Hiring Manager,

I'm a software developer in the San Francisco Bay Area with expertise in Ruby on Rails and Javascript. I'm interested in applying for the position of Ruby on Rails Developer at Customer Lobby.

You can see an example of my work at [RocketRide](#), a fictional rideshare app for listing and reserving spaceships. The app is built with React.js using the unidirectional architectural design pattern, Flux. Additionally, it uses the Cloudinary API to upload and store user profile pictures and spacecraft photos. Query requests are kept to a minimum by retrieving all necessary data on login, and then managing and filtering that data using functions in the various data stores.

Before focusing on software development, I worked at an educational technology company, IXL Learning, where I designed major pieces of the math practice section of the website. I collaborated with engineers on the implementation, giving me an empathetic view of the development process both from the engineers' and the designers' perspectives.

Additionally, I have experience learning challenging quantitative material. I earned a PhD in math from the University of California, San Diego. During that process, I was exposed to a wide array of mathematical fields, and published several papers on original research I conducted as a graduate student.

You can find more information on me and my projects in the attached resume, or from my [LinkedIn](#) and [Github](#) profiles.

Thank you for your time. I look forward to hearing from you soon. Best regards,

Scott Duane

A. Scott Duane✉ adrian.scott.duane@gmail.com

☎ (507) 581-4100

🏠 170 Vernon Terrace, Suite 2, Oakland, CA 94610

Project**RocketRide**Live • [GitHub](#)

App for organizing (fictional) rideshares on spacecraft of all types, built with Ruby on Rails and React.js

- Uses the Flux design pattern to manage AJAX queries, controller actions, and frontend rendering
- Implements the Cloudinary API to upload and store user profile and spacecraft photos

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A cellular automata engine, written in Javascript and using Chris Langton's 1986 behavioral rules

- Defines the various pieces of engine in a modular way, allowing for easy and efficient generalization of the original concept
- Utilizes the HTML Canvas library for clean, browser-agnostic behavior

Chess[GitHub](#)

Built in Ruby and designed to be played in the console

- Implements the minimax algorithm with adjustable depth to create an AI opponent

Skills

Ruby

Javascript

HTML/CSS

jQuery

RSpec

git

Ruby on Rails

React

Flux

SQL

Java

R

Experience**San Diego LGBT Pride**

April 2015 - July 2015

Wordpress Development Intern

Remote

- Built the Accessibility section of the San Diego LGBT Pride website, using the Wordpress platform
- Collaborated with a blind staff member to ensure that the site was robustly screen reader-friendly, exceeding the W3C Web Accessibility Standards

IXL Learning

July 2013 - January 2015

Product Analyst

San Mateo, CA

- Managed the development cycle for K-12 math practice software, from writing specifications with the analyst team to collaborating with the engineering team on implementation
- Designed new user interfaces, including a customized iPad keyboard and a sinusoidal graphing interface

Education**App Academy**

August 2015 - November 2015

Full Stack Web Development Course

San Francisco, CA

University of California, San Diego

September 2008 - June 2013

PhD, Mathematics (GPA 3.93)

La Jolla, CA

Research area: Algebraic and enumerative combinatorics

Dissertation: *Pattern Matching Statistics in the Permutations S_n and the Alternating Permutations A_n for Minimally Overlapping Patterns***Carleton College**

September 2003 - June 2007

BA, Mathematics (GPA 3.56, *magna cum laude*) [scottduane.github.io](https://github.com/scottduane) www.github.com/scottduane www.linkedin.com/in/sduane

Exhibit 21-13:

Duane's application for a Customer Success Engineer
position at OpenDoor on November 17, 2015
(EEOC_000399-EEOC_000400)

From: Scott Duane <adrian.scott.duane@gmail.com>
Sent: Tuesday, November 17, 2015 12:44 PM
To: jobs@plot.ly
Subject: Application for Customer Success Engineer
Attach: ScottDuaneResume.pdf

Hello,

I'm a software developer in the San Francisco Bay Area with expertise in Ruby on Rails and Javascript. I'm interested in applying for the position of Software Engineer at OpenDoor.

You can see an example of my work at [RocketRide](#), a fictional rideshare app for listing and reserving spaceships. The app is built with React.js using the unidirectional architectural design pattern, Flux. Additionally, it uses the Cloudinary API to upload and store user profile pictures and spacecraft photos. Query requests are kept to a minimum by retrieving all necessary data on login, and then managing and filtering that data using functions in the various data stores.

Before focusing on software development, I worked at an educational technology company, IXL Learning, where I designed major pieces of the math practice section of the website. I collaborated with engineers on the implementation, giving me an empathetic view of the development process both from the engineers' and the designers' perspectives.

Additionally, I have experience learning challenging quantitative material. I earned a PhD in math from the University of California, San Diego. During that process, I was exposed to a wide array of mathematical fields, and published several papers on original research I conducted as a graduate student.

You can find more information on me and my projects in the attached resume, or from my [LinkedIn](#) and [Github](#) profiles.

Thank you for your time. I look forward to hearing from you soon. Best regards,

Scott Duane

A. Scott Duane

✉ adrian.scott.duane@gmail.com

☎ (507) 581-4100

🏠 170 Vernon Terrace, Suite 2, Oakland, CA 94610

Projects**RocketRide**Live • [GitHub](#)

App for organizing (fictional) rideshares on spacecraft of all types, built with Ruby on Rails and React.js

- Uses the Flux design pattern to manage AJAX queries, controller actions, and frontend rendering
- Implements the Cloudinary API to upload and store user profile and spacecraft photos

Langton's AntLive • [GitHub](#)

A cellular automata engine, written in Javascript and using Chris Langton's 1986 behavioral rules

- Defines the various pieces of engine in a modular way, allowing for easy and efficient generalization of the original concept
- Utilizes the HTML Canvas library for clean, browser-agnostic behavior

Chess[GitHub](#)

Built in Ruby and designed to be played in the console

- Implements the minimax algorithm with adjustable depth to create an AI opponent

Skills

Ruby

Javascript

HTML/CSS

jQuery

RSpec

git

Ruby on Rails

React

Flux

SQL

Java

R

Experience**San Diego LGBT Pride**

April 2015 - July 2015

Wordpress Development Intern

Remote

- Built the Accessibility section of the San Diego LGBT Pride website, using the Wordpress platform
- Collaborated with a blind staff member to ensure that the site was robustly screen reader-friendly, exceeding the W3C Web Accessibility Standards

IXL Learning

July 2013 - January 2015

Product Analyst

San Mateo, CA

- Managed the development cycle for K-12 math practice software, from writing specifications with the analyst team to collaborating with the engineering team on implementation
- Designed new user interfaces, including a customized iPad keyboard and a sinusoidal graphing interface

Education**App Academy**

August 2015 - November 2015

Full Stack Web Development Course

San Francisco, CA

University of California, San Diego

September 2008 - June 2013

PhD, Mathematics (GPA 3.93)

La Jolla, CA

Research area: Algebraic and enumerative combinatorics

Dissertation: *Pattern Matching Statistics in the Permutations S_n and the Alternating Permutations A_n for Minimally Overlapping Patterns***Carleton College**

September 2003 - June 2007

BA, Mathematics (GPA 3.56, *magna cum laude*)📁 [scottduane.github.io](#)📄 [www.github.com/scottduane](#)📄 [www.linkedin.com/in/sduane](#)

Exhibit 21-14:

Duane's application for a Front End Engineer position at
Robert Half Technology on November 19, 2015
(EEOC_000397-EEOC_000398)

From: Scott Duane <adrian.scott.duane@gmail.com>
Sent: Thursday, November 19, 2015 1:00 PM
To: gabrielle.jakoby@rht.com
Subject: Application for Front End Engineer
Attach: ScottDuaneResume.pdf

Hello,

I'm a software developer in the San Francisco Bay Area with expertise in Ruby on Rails and Javascript. I'm interested in applying for the open Front End Engineer position.

You can see an example of my work at RocketRide, a fictional rideshare app for listing and reserving spaceships. The app is built with React.js using the unidirectional architectural design pattern, Flux. Additionally, it uses the Cloudinary API to upload and store user profile pictures and spacecraft photos. Query requests are kept to a minimum by retrieving all necessary data on login, and then managing and filtering that data using functions in the various data stores.

Before focusing on software development, I worked at an educational technology company, IXL Learning, where I designed major pieces of the math practice section of the website. I collaborated with engineers on the implementation, giving me an empathetic view of the development process both from the engineers' and the designers' perspectives.

Additionally, I have experience learning challenging quantitative material. I earned a PhD in math from the University of California, San Diego. During that process, I was exposed to a wide array of mathematical fields, and published several papers on original research I conducted as a graduate student.

You can find more information on me and my projects in the attached resume, or from my LinkedIn and Github profiles.

Thank you for your time. I look forward to hearing from you soon. Best regards,

Scott Duane

A. Scott Duane✉ adrian.scott.duane@gmail.com

☎ (507) 581-4100

🏠 170 Vernon Terrace, Suite 2, Oakland, CA 94610

Project**RocketRide**Live • [GitHub](#)

App for organizing (fictional) rideshares on spacecraft of all types, built with Ruby on Rails and React.js

- Uses the Flux design pattern to manage AJAX queries, controller actions, and frontend rendering
- Implements the Cloudinary API to upload and store user profile and spacecraft photos

Langton's AntLive • [GitHub](#)

A cellular automata engine, written in Javascript and using Chris Langton's 1986 behavioral rules

- Defines the various pieces of engine in a modular way, allowing for easy and efficient generalization of the original concept
- Utilizes the HTML Canvas library for clean, browser-agnostic behavior

Chess[GitHub](#)

Built in Ruby and designed to be played in the console

- Implements the minimax algorithm with adjustable depth to create an AI opponent

Skills

Ruby

Javascript

HTML/CSS

jQuery

RSpec

git

Ruby on Rails

React

Flux

SQL

Java

R

Experience**San Diego LGBT Pride**

April 2015 - July 2015

Wordpress Development Intern

Remote

- Built the Accessibility section of the San Diego LGBT Pride website, using the Wordpress platform
- Collaborated with a blind staff member to ensure that the site was robustly screen reader-friendly, exceeding the W3C Web Accessibility Standards

IXL Learning

July 2013 - January 2015

Product Analyst

San Mateo, CA

- Managed the development cycle for K-12 math practice software, from writing specifications with the analyst team to collaborating with the engineering team on implementation
- Designed new user interfaces, including a customized iPad keyboard and a sinusoidal graphing interface

Education**App Academy**

August 2015 - November 2015

Full Stack Web Development Course

San Francisco, CA

University of California, San Diego

September 2008 - June 2013

PhD, Mathematics (GPA 3.93)

La Jolla, CA

Research area: Algebraic and enumerative combinatorics

Dissertation: *Pattern Matching Statistics in the Permutations S_n and the Alternating Permutations A_n for Minimally Overlapping Patterns***Carleton College**

September 2003 - June 2007

BA, Mathematics (GPA 3.56, *magna cum laude*)

Exhibit 21-15:

Duane's application for an Intern, Member of Technical Staff position at Salesforce on November 19, 2015
(EEOC_000599)

From: Jobs Site Guest User <sfdcapp_gacks@salesforce.com>
Sent: Thursday, November 19, 2015 2:45 PM
To: adrian.scott.duane@gmail.com
Subject: Salesforce Job Application - SalesforceIQ - Intern, Member of Technical Staff



Hi Scott Duane,

Congratulations! You have officially applied for a job at Salesforce. Thanks so much for letting us know you're interested in joining our [Ohana](#).

Good news – your info is now in the cloud, not a black hole! That means a member of our recruiting team will be personally reviewing your application. If you're a potential match for one of our open positions, we'll be in touch ASAP.

If we don't have the right role for you right now, don't worry – we'll keep your application. In the meantime, stay in touch with us on [Facebook](#), [Twitter](#), [Instagram](#), and the [Salesforce Blog](#).

Thanks again for considering Salesforce and have a great week!

The Salesforce Recruiting Team

P.S. This is an auto-generated message from the Salesforce careers site. Please do not reply to this email.

Exhibit 21-16:

Duane's application for a Front End Engineer position at
Amazon on November 19, 2015
(EEOC_000665)

From: Amazon @ icims <amazon+autoreply@agents.icims.com>
Sent: Thursday, November 19, 2015 12:43 PM
To: adrian.scott.duane@gmail.com
Subject: You've started your job application!

Dear Scott,

Thanks for starting your application for job:
Front-end Engineer

If you lose track of the job application process please follow this link to return to the job application:
<https://us-amazon.icims.com/r.jsp?p=305713>

If you wish to email your resume for consideration please do so to this email address:
amazon@agents.icims.com

This message was sent to adrian.scott.duane@gmail.com. If you don't want to receive these emails from this company in the future, please go to:
<https://amazon.icims.com/icims2/?r=97197639376>

Exhibit 22-1:
Rejection from Education Portal for the position of
Content Strategist, dated January 20, 2015
(EEOC_000962)

From: Kathryn Monreal
<comm_20150120181421_HDUTTKH1GI5AZT7H@dropbox.theresumator.com>
Sent: Tuesday, January 20, 2015 1:14 PM
To: adrian.scott.duane@gmail.com
Subject: Education Portal Content Strategist Opening

Hi Scott,

Thank you so much for your interest in our Content Strategist opening here at Education Portal. We have received feedback from the hiring team and at this time we have decided to move forward with additional candidates for the position. We greatly appreciate your interest in Education Portal and wish you the best of luck with your future endeavors.

We will absolutely keep your resume on file for any future openings that might be a good fit for you.

Thanks,

Kathryn Monreal
Office Assistant
Education Portal

CONFIDENTIAL INFORMATION

E-mails from Education Portal normally contain confidential information and are for the sole use of the intended recipient. Disclosure of the contents of this email to unauthorized third parties, distribution of this email or other unauthorized use of this email or its contents is strictly prohibited. If you have received this email in error or are no longer authorized to have access to its contents, you are instructed to immediately notify the sender of the error and delete the e-mail, all attachments and all copies.

To respond, you can reply to this message or visit the following URL:
https://app.theresumator.com/app/resumes/reply/prospect_20150113211756_HCI3U6BQZ0OIXHS2/comm_20150120181421_HDUTTKH1GI5AZT7H

Exhibit 22-2:

Rejection from Kizoom for the position of Research &
Analytics Lead, dated January 30, 2015
(EEOC_000606)

From: Erica Warp <erica@kizoomlabs.com>
Sent: Friday, January 30, 2015 3:02 PM
To: Scott Duane <adrian.scott.duane@gmail.com>
Subject: Re: Application for Research & Analytics Lead position

Hi Scott,

Thank you for reaching out and for your interest in Kizoom. Unfortunately, we are looking for someone with different skills and experiences for this position.

I wish you the best of luck in your search for a great job!

Best,

Erica

On Mon, Jan 26, 2015 at 11:44 AM, Scott Duane <adrian.scott.duane@gmail.com> wrote:

Hi Erica,

I saw your post on EdSurge for the position of Research & Analytics Lead at Kizoom. I've spent a good part of the last year designing the IXL Learning iPad app, and as part of that project I had a chance to check out the Brain Jump app. I absolutely love what you're doing -- your games are fun, engaging, and purposeful for kids.

To summarize my own background, I earned my PhD in math from UC San Diego in June 2013, and I've been working at IXL ever since. At IXL, I've designed quite a few of the skills offered in their Precalculus section, I revamped their mobile app keyboard, and I did a lot of work on making the site more accessible to students with disabilities. Although I've learned a great deal about the software development process at IXL, I'm now looking for a role that's more technically challenging and utilizes my math background more fully. The position at Kizoom sounds like a perfect opportunity.

I've attached my resume, and you can also check out my LinkedIn profile to learn a little more.

Thanks for your time and consideration. Best regards,

Scott Duane

--

Erica Warp PhD
Founder & CEO
Kizoom
Know and grow your brain!
www.kizoomlabs.com

Exhibit 22-3:

Rejection from Microsoft for the position of data scientist,
dated February 6, 2015
(EEOC_000936)

From: Brian Schmidt (Randstad Sourceright) <v-brsch@microsoft.com>
Sent: Friday, February 6, 2015 8:37 PM
To: adrian.scott.duane@gmail.com
Cc: Brian Schmidt (Randstad Sourceright) <v-brsch@microsoft.com>
Subject: Microsoft Employee Referral Update



Hi Adrian,

Thank you again for your interest in Microsoft. We want to follow-up with you about your submission, which a Microsoft employee made through the U.S. Employee Referral Program on 1/16/2015.

At this time, there is no recruiter activity on your resume. This doesn't mean there isn't a match between your background and Microsoft's open requisitions; just that one has not been identified at this time. This is the final update you will receive from the Employee Referral team. However, please be assured that your information will continue to remain accessible in our database to all of our recruiters and they may contact you in the future as openings occur. If a recruiter identifies a match between your skills and experience with an open position, they will contact you directly.

In the meantime, to maximize the visibility of your skills and experience consider joining our [Talent Network](#). You can set up custom job agents to determine the types of jobs you are notified about and the frequency you receive them. New positions are posted online at <http://careers.microsoft.com> all the time and you should continue to apply to all positions you are interested in and for which you believe you may be qualified.

If your contact information, education status, or work history change in the future, please have your Microsoft employee contact resubmit your resume to the Employee Referral program.

Best Regards,

Brian Schmidt
Snr. Employee Referral Profiler
Randstad Sourceright
T 425-981-4879
v-brsch@microsoft.com
brian.schmidt@randstadsourceright.com
www.randstadsourceright.com



Exhibit 22-4:
Rejection from Kink dated March 6, 2015
(EEOC_000441)

From: Scott Duane <adrian.scott.duane@gmail.com>
Sent: Friday, March 6, 2015 12:11 AM
To: no-reply@jobvite.com
Subject: Re: Your application for Software Engineer at Kink.com

Hi,

Thanks very much for the response.

If you wouldn't mind me asking, what skills are you looking for that I'm currently lacking? In other words, what could I do to strengthen my application?

All the best,

Scott Duane

On Mar 5, 2015, at 4:28 PM, Kink.com Recruiting team <no-reply@jobvite.com> wrote:

Dear SCOTT,

Thank you for giving us the opportunity to consider you for employment.

We have reviewed your background and qualifications and find that we do not have an appropriate position for you at this time. We appreciate your interest in Kink.com and wish you success in your job search.

Sincerely,

The Kink.com Recruiting Team

You can change your email preferences at:
<https://hire.jobvite.com/l?ks47GfgwR>

Exhibit 22-5:

Rejection from Khan Academy for the position of Product
Manager, dated March 26, 2015
(EEOC_000596)

From: kayla@khanacademy.org
Sent: Thursday, March 26, 2015 2:46 PM
To: adrian.scott.duane@gmail.com
Subject: Application for Product Manager - Khan Academy

Hi Scott,

Thank you for your interest in Khan Academy. We appreciate the time you spent to apply for a position. As a very small team, we aren't able to interview or hire all of the extremely talented candidates that apply, and unfortunately we won't be able to move forward with your candidacy at this time. We are truly grateful for your interest in Khan Academy and wish you all of the best in your job search and in your future endeavors.

There are other ways to get involved and help if you'd like to contribute to Khan Academy in your spare time. To learn more, check out this link: khanacademy.org/contribute

Warmest regards,
Kayla

Exhibit 22-6:

Rejection from Insight Health Data Science Fellows
Program dated May 19, 2015
(EEOC_000604)

From: Insight Health Data Science <info@insighthealthdata.com>
Sent: Tuesday, May 19, 2015 5:36 PM
To: adrian.scott.duane@gmail.com
Cc: info@insighthealthdata.com
Subject: Insight Health Data Science Application Update

Scott,

Thank you very much for your interest in the July 2015 session of the Insight Health Data Science Fellows Program. Due to the small size of the program, the competition for places has been incredibly tough - and much tougher than we had expected. While we were impressed by your experience and research background, we are unfortunately unable to offer you a position in the Boston program for the upcoming session in July.

We are actively working to grow our program further in order to accept more Fellows and provide alternative paths that would help top researchers like yourself transition into industry. The best way to stay up-to-date as these efforts evolve is to sign up for our Insight Health Data Science [Notification List](#).

If the timing works for you, we hope you will consider re-applying for a later session of Insight with your updated application. If you do choose to re-apply, please keep in mind the following:

- If you haven't already, please check out [this blog post](#) by Insight Director of Product, John Joo, which we hope will help you get up to speed in many of the tools and skills that are required to be a data scientist.

- We strongly encourage you to use these skills to build a data-oriented side project, which will help demonstrate your abilities in data science.

- We are currently accepting applications for Insight Data Science Silicon Valley and New York, as well as Insight Data Engineering Silicon Valley and New York for September 2015. We will send updates to the Insight Data Science [Notification List](#) with application deadlines and new program offerings as they are announced.

Again, thank you so much for taking the time to apply for Insight.

All the best,

The Insight Team

Exhibit 22-7:
Rejection from No RedInk on November 19, 2015
(EEOC_000598)

From: josh=noredink.com@greenhouse.io on behalf of
Josh Leven <josh@noredink.com>
Sent: Thursday, November 19, 2015 3:41 PM
To: adrian.scott.duane@gmail.com
Subject: Important information about your application to NoRedInk

Scott,

Unfortunately, we have decided not to proceed with your candidacy for the current opening at NoRedInk.

We received many qualified applicants and have decided to move ahead with another candidate who we feel is a better match for this particular position.

Thanks again for your interest in NoRedInk and we wish you luck in your search.

Regards,
NoRedInk

Exhibit 22-8:

Rejection from Robert Half Technology for the position
of Front End Engineer, dated November 19, 2015
(EEOC_000603)

From: Jakoby, Gabrielle (00410) <gabrielle.jakoby@rht.com>
Sent: Thursday, November 19, 2015 1:04 PM
To: Scott Duane <adrian.scott.duane@gmail.com>
Subject: RE: Application for Front End Engineer

Thank you for your recent interest in Robert Half Technology. We have reviewed your application; however, at this time, we do not have any opportunities that match your current background and experience.

To further guide you in your job search, we encourage you to visit the career center we developed with CareerBuilder® at [Job Search Advice](#) . This site contains valuable advice and tools that will assist you in your career.

Please continue to keep us informed of any newly acquired experience, skills and expertise. Thank you again for your interest in Robert Half Technology.

Sincerely,

Staffing Professionals

Robert Half International

50 California Street | 10th Floor | San Francisco | CA 94111

From: Scott Duane [mailto:adrian.scott.duane@gmail.com]
Sent: Thursday, November 19, 2015 10:00 AM
To: Jakoby, Gabrielle (00410) <gabrielle.jakoby@rht.com>
Subject: Application for Front End Engineer

Hello,

I'm a software developer in the San Francisco Bay Area with expertise in Ruby on Rails and Javascript. I'm interested in applying for the open Front End Engineer position.

You can see an example of my work at RocketRide, a fictional rideshare app for listing and reserving spaceships. The app is built with React.js using the unidirectional architectural design pattern, Flux. Additionally, it uses the Cloudinary API to upload and store user profile pictures and spacecraft photos. Query requests are kept to a minimum by retrieving all necessary data on login, and then managing and filtering that data using functions in the various data stores.

Before focusing on software development, I worked at an educational technology company, IXL Learning, where I designed major pieces of the math practice section of the website. I collaborated with engineers on the implementation, giving me an empathetic view of the development process both from the engineers' and the designers' perspectives.

Additionally, I have experience learning challenging quantitative material. I earned a PhD in math from the University of California, San Diego. During that process, I was exposed to a wide array of mathematical fields, and published several papers on original research I conducted as a graduate student.

You can find more information on me and my projects in the attached resume, or from my LinkedIn and Github profiles.

Thank you for your time. I look forward to hearing from you soon. Best regards,

Scott Duane

Exhibit 22-9:
Rejection from Remind on November 24, 2015
(EEOC_000396).

From: Scott Duane <adrian.scott.duane@gmail.com>
Sent: Tuesday, November 24, 2015 12:39 AM
To: Matt Rubens <matt@remind101.com>
Subject: Re: Regarding your application to Remind

Hi Matt,

I appreciate your response. I really like the work Remind does, and if I find myself on the job market again in the future I'll definitely look back into it.

Best regards,

Scott

On Mon, Nov 23, 2015 at 9:25 PM, Matt Rubens <matt@remind101.com> wrote:

Hi Scott,

We've reviewed your application to Remind, but unfortunately we don't have an appropriate position for you at this time. We're generally looking for a bit more experience than you currently have. If anything changes or we find another position to be a better fit, we'll be sure to reach out to you.

Thanks again, and we wish you success in your job search.

Sincerely,
Matt

Exhibit 22-10:

Rejection from Khan Academy for the position of
Software Developer on November 26, 2015
(EEOC_000621)

From: Brittany Ostosh <brittany@khanacademy.org>
Sent: Thursday, November 26, 2015 2:31 PM
To: adrian.scott.duane@gmail.com
Subject: Application for Software Developer - Khan Academy

Hi Scott,

Thank you for your interest in Khan Academy. We appreciate the time you spent to apply for this opportunity. As a very small team, we aren't able to interview or hire all of the extremely talented candidates that apply, and unfortunately we won't be able to move forward with your candidacy at this time. We are truly grateful for your interest in Khan Academy and wish you all of the best in your job search and in your future endeavors.

There are other ways to get involved and help if you'd like to contribute to Khan Academy in your spare time. To learn more, check out this link: khanacademy.org/contribute

Warmest regards,
Brittany

Exhibit 23-1:

Enrollment in “Reporting Data and Conducting
Reproducible Research,” dated January 13, 2015
(EEOC_000951)

From: Reproducible Research | Coursera Staff <noreply@coursera.org>
Sent: Tuesday, January 13, 2015 3:57 PM
To: Scott Duane <adrian.scott.duane@gmail.com>
Subject: Welcome To Reproducible Research!

Scott Duane,

Read what your instructor(s) from Reproducible Research on Coursera has to say today.



Dear Scott Duane,

Thanks for signing up for Reporting Data and Conducting Reproducible Research.

This course focuses on the concepts and tools behind reporting modern data analyses in a reproducible manner. Reproducible research is the idea that data analyses, and more generally, scientific claims, are published with their data and software code so that others may verify the findings and build upon them. The need for reproducibility is increasing dramatically as data analyses become more complex, involving larger datasets and more sophisticated computations. Reproducibility allows for people to focus on the actual content of a data analysis, rather than on superficial details reported in a written summary. In addition, reproducibility makes an analysis more useful to others because the data and code that actually conducted the analysis are available. This course will focus on literate statistical analysis tools which allow one to publish data analyses in a single document that allows others to easily execute the same analysis to obtain the same results.

The course has already started, so you can dive right in and get to work.

All the best,
Roger Peng

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Exhibit 23-2:

Participation in “Mathematical Biostatistics Boot
Camp 1,” dated January 27, 2018
(EEOC_001005)

From: Coursera Staff <noreply@coursera.org>
Sent: Tuesday, January 27, 2015 12:30 AM
To: Scott Duane <adrian.scott.duane@gmail.com>
Subject: Thank you for your participation

Scott Duane,
Thank you for your participation.

Dear Scott Duane,

Thank you for participating in "Mathematical Biostatistics Boot Camp 1" by Johns Hopkins University. We hope that you learned a lot from the course and made a few new friends!

You can check your [Accomplishments](#) page to see your overall performance in the course. If you are interested in taking the course again, you can wait for a new session to be announced or sign up for the watchlist on the course to be announced on [this page](#).

We look forward to seeing you in class again soon!

Keep learning,
the Coursera team

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Exhibit 23-3:
Participation “R Programming,” dated
February 1, 2015
(EEOC_000959)

From: R Programming Course Team <noreply@coursera.org>
Sent: Sunday, February 1, 2015 8:14 PM
To: Scott Duane <adrian.scott.duane@gmail.com>
Subject: R Programming: Wrap-up

Scott Duane,

The latest information from [R Programming](#) by [Johns Hopkins University](#) on Coursera.

Congratulations on finishing R Programming!

We will set the grading and release the Statements of Accomplishment for the Course. It might take as long as two weeks for Coursera to verify and issue statements and certificates.

A couple of other notes:

- This course is the second course in the [Data Science Specialization](#). The next course is [Getting and Cleaning Data](#) which focuses on how to obtain and clean data from the web and through APIs.
- The course will begin again immediately starting in a couple of days. If you are still interested in keeping in touch with your fellow learners, please enroll in the new course and keep the conversation going. You may also be an invaluable resource for new course takers!
- Keep your eye on Johns Hopkins offerings from Coursera. All announcements about future offerings will be posted at: <https://twitter.com/jhubiostat> and <http://simplystatistics.org/>, <http://twitter.com/simplystats>.

Thanks again for all of your efforts during the course of the class and best of luck in your career!

Roger Peng and the Data Science Team

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Exhibit 23-4:
Participation in “Getting and Cleaning Data,”
dated February 1, 2015
(EEOC_000968)

From: Getting and Cleaning Data Course Team <noreply@coursera.org>
Sent: Sunday, February 1, 2015 8:15 PM
To: Scott Duane <adrian.scott.duane@gmail.com>
Subject: Getting and Cleaning Data Course Wrap-Up

Scott Duane,

The latest information from [Getting and Cleaning Data](#) by [Johns Hopkins University](#) on Coursera.

Congratulations on finishing Getting and Cleaning Data!

We will set the grading and release the Statements of Accomplishment for the course. It might take as long as two weeks for Coursera to verify and issue statements and certificates.

A couple of other notes:

* The course will begin again immediately starting in a couple of days. If you are still interested in keeping in touch with your fellow learners, please enroll in the new course and keep the conversation going. You may also be an invaluable resource for new course takers!

* Keep your eye on Hopkins offerings from Coursera. All announcements about future offerings will be posted at: <https://twitter.com/jhubiostat> and <http://simplystatistics.org/>, <http://twitter.com/simplystats>.

* If you liked this course, please consider taking some of the other course offerings through the Data Science Track. Now that you have the ability to collect and clean data, you are perfectly prepared to step into the real fun part of data science - answering questions with all the data you now have access to!

* If you have cool projects you created through the course, please Tweet them to either of the addresses above so we can see them!

Thanks again for all of your efforts during the course of the class and best of luck in your career!

Jeff Leek and the Data Science Track Team

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Exhibit 23-5:
Enrollment in “Obtaining Data,” dated
February 2, 2015
(EEOC_000975)

From: Getting and Cleaning Data | Coursera Staff <noreply@coursera.org>
Sent: Monday, February 2, 2015 6:39 PM
To: Scott Duane <adrian.scott.duane@gmail.com>
Subject: Welcome To Getting and Cleaning Data!

Scott Duane,

Read what your instructor(s) from Getting and Cleaning Data on Coursera has to say today.



Scott Duane,

Thanks for signing up for Obtaining Data.

Before you can work with data you have to get some. This course will cover the basic ways that data can be obtained. The course will cover obtaining data from the web, from APIs, and from colleagues in various formats. It will also cover the basics of data cleaning and how to make data tidy. Tidy data dramatically speed downstream data analysis tasks. The course will also cover the components of a complete data set including raw data, processing instructions, codebooks, and processed data. The course will cover the basics needed for collecting, cleaning, and sharing data.

The course has already started, so you can dive right in and get to work.

All the best,
Jeff Leek

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Exhibit 23-6:
Enrollment in “Data Analysis,” dated
February 8, 2015
(EEOC_0001004)

From: Data Analysis | Coursera Staff <noreply@coursera.org>
Sent: Sunday, February 8, 2015 11:59 PM
To: Scott Duane <adrian.scott.duane@gmail.com>
Subject: Welcome To Data Analysis!

Scott Duane,

Read what your instructor(s) from Data Analysis on Coursera has to say today.



Dear Scott Duane,

Thank you for signing up for Data Analysis from the Johns Hopkins Bloomberg School of Public Health and Coursera. You have probably heard that this is the era of Big Data. Stories about companies or scientists using data to recommend movies, discover who is pregnant based on credit card receipts, or confirm the existence of the Higgs Boson regularly appear in the Forbes, the Economist, the Wall Street Journal, and The New York Times. Data analysis is a course designed to give you the skills to help turn your favorite data into the next "big thing". I'm excited you have decided to join in the data revolution.

We'll be in touch again when the class is about to start.

See you soon,
Jeff Leek

Stay in touch

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Exhibit 23-7:

Enrollment in “Computational Methods for Data
Analysis,” dated February 9, 2015
(EEOC_001012)

From: Computational Methods for Data Analysis | Coursera Staff <noreply@coursera.org>
Sent: Monday, February 9, 2015 12:01 AM
To: Scott Duane <adrian.scott.duane@gmail.com>
Subject: Welcome To Computational Methods for Data Analysis!

Scott Duane,

Read what your instructor(s) from Computational Methods for Data Analysis on Coursera has to say today.



Thank you for signing up for [Computational Methods for Data Analysis](#)! The course has begun, so please do not hesitate to jump right in.

Once you log in to the course, you will be taken straight to the announcements page, where you will be able to check out all the latest happenings in class.

We look forward to seeing you in class!

Your course staff
Computational Methods for Data Analysis

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Exhibit 23-8:
Participation in “Exploratory Data Analysis,”
dated March 6, 2015
(EEOC_001008)

From: Coursera Staff <noreply@coursera.org>
Sent: Friday, March 6, 2015 4:54 PM
To: Scott Duane <adrian.scott.duane@gmail.com>
Subject: Thank you for your participation

Scott Duane,
Thank you for your participation.

Dear Scott Duane,

Thank you for participating in "Exploratory Data Analysis" by Johns Hopkins University. We hope that you learned a lot from the course and made a few new friends!

You can check your [Accomplishments](#) page to see your overall performance in the course. If you are interested in taking the course again, you can wait for a new session to be announced or sign up for the watchlist on the course to be announced on [this page](#).

We look forward to seeing you in class again soon!

Keep learning,
the Coursera team

[fac.](#) [twi.](#) [blog](#) [blog](#)

[Unsubscribe](#) [Visit support](#) [Discuss the course in class forums](#) [Please do not reply directly to this email](#)

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Exhibit 23-9:

Participation in “Statistical Inference,” dated
March 6, 2015
(EEOC_001010)

From: Coursera Staff <noreply@coursera.org>
Sent: Friday, March 6, 2015 5:20 PM
To: Scott Duane <adrian.scott.duane@gmail.com>
Subject: Thank you for your participation

Scott Duane,
Thank you for your participation.

Dear Scott Duane,

Thank you for participating in "Statistical Inference" by Johns Hopkins University. We hope that you learned a lot from the course and made a few new friends!

You can check your [Accomplishments](#) page to see your overall performance in the course. If you are interested in taking the course again, you can wait for a new session to be announced or sign up for the watchlist on the course to be announced on [this page](#).

We look forward to seeing you in class again soon!

Keep learning,
the Coursera team

[fac.](#) [twr.](#) [blog](#) [blog](#)

[Unsubscribe](#) [Visit support](#) [Discuss the course in class forums](#) [Please do not reply directly to this email](#)

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Exhibit 23-10:

Participation in “Algorithms, Part I,” dated
March 6, 2015
(EEOC_001014)

From: Algorithms, Part I Course Team <noreply@coursera.org>
Sent: Friday, March 6, 2015 12:13 PM
To: Scott Duane <adrian.scott.duane@gmail.com>
Subject: Farewell to Algorithms, Part I

Scott Duane,
The latest information from [Algorithms, Part I](#) by [Princeton University](#) on Coursera.

Thank you for participating in *Algorithms, Part I*. We hope that you enjoyed the experience as much as we did! We very much appreciate the energy and enthusiasm that this community brought to the learning experience. We are especially grateful to the Community TAs who patiently and promptly answered so many questions in the discussion forums.

We hope that we'll see many of you again in [Algorithms, Part II](#). Now that you've learned the fundamentals, you're ready to explore a whole new range of ingenious algorithms for graph and string processing that are playing a critical role in applications of computing today.

Many of you have inquired about access to our Coursera content in the future. You should be able to access *Algorithms, Part I* through the duration of *Algorithms, Part II* - the autograders should remain functional but the discussion forums will not be monitored. For those of you that did not have time to finish, we do plan to offer the course again. You can keep up to date of any new developments either at Coursera or our [booksite](#).

We're still learning a great deal about online education and innovative approaches to disseminating knowledge. In order to help us improve future offerings of the course, please fill out this [post-course survey](#).

[Visit the course to start learning](#)

[Go to Class](#)

[fac...](#) [twi...](#) [blog](#) [blog](#)

[Unsubscribe](#) [Visit support](#) [Discuss the course in class forums](#) Please do not reply directly to this email

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Exhibit 23-11:

Participation in “Data Analysis and Statistical
Inference,” dated May 20, 2015
(EEOC_001011)

From: Coursera Staff <noreply@coursera.org>
Sent: Wednesday, May 20, 2015 1:04 AM
To: Scott Duane <adrian.scott.duane@gmail.com>
Subject: Thank you for your participation

Scott Duane,
Thank you for your participation.

Dear Scott Duane,

Thank you for participating in "Data Analysis and Statistical Inference " by Duke University. We hope that you learned a lot from the course and made a few new friends!

You can check your [Accomplishments](#) page to see your overall performance in the course. If you are interested in taking the course again, you can wait for a new session to be announced or sign up for the watchlist on the course to be announced on [this page](#).

We look forward to seeing you in class again soon!

Keep learning,
the Coursera team

[fac. twi. blog blog](#)

[Unsubscribe](#) [Visit support](#) [Discuss the course in class forums](#) [Please do not reply directly to this email](#)

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Exhibit 24-1:

Application for a teacher position on July 28, 2015
(EEOC_000475-EEOC_000477)

From: A. Scott Duane <adrian.duane@gmail.com>
Sent: Tuesday, July 28, 2015 5:24 PM
To: jzncn-5145398612@job.craigslist.org
Subject: Math teaching position
Attach: tech_plus_resume.pdf

Hello,

I saw your ad on Craig's list for an after school math teaching position. I have a PhD in math, experience teaching at the college level, and experience teaching ages 8-12 in the setting of a gifted/talented summer program. I've attached my resume for your consideration.

Best,

Scott Duane

A. SCOTT DUANE

1538 Lexington Ave ◊ El Cerrito, CA 94530
(507) 581-4100 ◊ adrian.scott.duane@gmail.com

EDUCATION

- University of California, San Diego** *June 2013*
Ph.D. in Mathematics
GPA: 3.93
Research area: Algebraic and enumerative combinatorics
- Carleton College** *June 2007*
B.A. in Mathematics
GPA: 3.56
Magna cum laude graduate

PROGRAMMING LANGUAGES

Java (fluent), Ruby (proficient), Python (proficient), Swift (proficient), HTML/CSS (proficient), R (proficient), Matlab (proficient), Maple (proficient)

TECHNICAL EXPERIENCE

- IXL Learning** July 2013 - January 2015
Product Analyst *San Mateo, CA*
- Managed the entire development cycle for K-12 math practice software, including brainstorming new skills, designing questions and explanations, writing specifications, testing, and debugging
 - Created new user interfaces, such as customized iPad and Android tablet keyboards and a sinusoidal graphing component
- UC San Diego** September 2008 - June 2013
Teaching Assistant *San Diego, CA*
- Courses included Precalculus, Single and Multivariable Calculus, Linear Algebra, Differential Equations, and Mathematical Reasoning (proof writing)
- UC San Diego** January 2012 - April 2012
Associate Instructor *San Diego, CA*
- Instructor of record for a university-level Precalculus course
- Johns Hopkins Center for Talented Youth** Summers 2010 - 2012
Instructor *La Jolla, CA & Palo Alto, CA*
- Taught intensive 3-week mathematics courses to gifted youth ages 10-12
 - Designed the curriculum for each course, heavy on hands-on lessons on advanced concepts such as fractal geometry, modular arithmetic, recurrence relations, and countability of sets
- Carleton College Summer Math Program for Women** Summer 2008
Program Assistant *Northfield, MN*
- Managed program logistics such as housing, food, weekend activities, and supply acquisition
- Carleton College Department of Mathematics** September 2007 - June 2008
Teaching Intern *Northfield, MN*
- Ran weekly problem-solving sessions, graded homework, and held office hours for Calculus I, Multivariable Calculus, and Introduction to Mathematics
 - Assisted faculty in writing and grading exams and managing other course logistics
- Wabash College** Summer 2006
Undergraduate Researcher *Crawfordsville, IN*
- Completed a research project on the chromatic number of the zero-divisor graphs of the groups Z_n , resulting in a publication

NON-TECHNICAL EXPERIENCE

Visible Bodies

January 2011 - present

*Founder, Producer, & Video Editor**San Diego, CA, Oakland, CA & Minneapolis, MN*

- Produced narrated photography exhibits in two major cities showcasing the lives of transgender individuals
- Raised funds, solicited photographers, managed community relationships, maintained a fiscal sponsorship, and arranged exhibitions across the United States and in Europe
- Collaborated with established for-profit and non-profit organizations to create educational materials and events for trans people

Transgress Press

August 2013 - April 2014

*Social Media Consultant & Event Organizer**Oakland, CA*

- Maintained the social media presence for a grassroots publishing company, tripling its Facebook following to 1000+
- Organized book release events in several major cities across the United States

Hillcrest Youth Center

March 2010 - June 2013

*Group Facilitator**San Diego, CA*

- Served as a mentor and discussion group facilitator at a drop-in center for LGBT teenagers

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Duane, A. Scott, "Men Like Me," a chapter in the anthology *Manning Up: Trans Men on Finding Brotherhood, Family, and Themselves*, Transgress Press, June 2014.

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Nina Wu

Educational Game Designer at MIND Research Institute

Relationship: Colleague at IXL Learning

- Email: ninawu88@gmail.com
- Phone: (239) 297-5601

Curtis Crane

Owner and Surgeon at Brownstein & Crane Surgical Services

Relationship: Collaborator on the Trans Health Video Project

Email: curtis@brownsteincrane.com

- Phone: (603) 667-5555

Jeff Remmel

Professor of Mathematics at UC San Diego

Relationship: Dissertation advisor

- Email: jremmel@math.ucsd.edu

Zander Keig

Licensed Clinical Social Worker at the Veterans' Administration

Relationship: Colleague at Transgress Press

- Email: zander.keig@gmail.com
- Phone: (415) 504-7149

Exhibit 24-2:

Application for a support analyst position on July 28,
2015

(EEOC_000478-EEOC_000480)

From: A. Scott Duane <adrian.duane@gmail.com>
Sent: Tuesday, July 28, 2015 5:17 PM
To: qdzm-5142834351@job.craigslist.org
Subject: Desktop support analyst
Attach: tech_plus_resume.pdf

Hi,

I came across your ad for a support analyst on Craig's list. I've attached my resume for your consideration.

Best,

Scott Duane

A. SCOTT DUANE

1538 Lexington Ave ◊ El Cerrito, CA 94530
(507) 581-4100 ◊ adrian.scott.duane@gmail.com

EDUCATION

University of California, San Diego

June 2013

Ph.D. in Mathematics

GPA: 3.93

Research area: Algebraic and enumerative combinatorics

Carleton College

June 2007

B.A. in Mathematics

GPA: 3.56

Magna cum laude graduate

PROGRAMMING LANGUAGES

Java (fluent), Ruby (proficient), Python (proficient), Swift (proficient), HTML/CSS (proficient), R (proficient), Matlab (proficient), Maple (proficient)

TECHNICAL EXPERIENCE

IXL Learning

July 2013 - January 2015

Product Analyst

San Mateo, CA

- Managed the entire development cycle for K-12 math practice software, including brainstorming new skills, designing questions and explanations, writing specifications, testing, and debugging
- Created new user interfaces, such as customized iPad and Android tablet keyboards and a sinusoidal graphing component

UC San Diego

September 2008 - June 2013

Teaching Assistant

San Diego, CA

- Courses included Precalculus, Single and Multivariable Calculus, Linear Algebra, Differential Equations, and Mathematical Reasoning (proof writing)

UC San Diego

January 2012 - April 2012

Associate Instructor

San Diego, CA

- Instructor of record for a university-level Precalculus course

Johns Hopkins Center for Talented Youth

Summers 2010 - 2012

Instructor

La Jolla, CA & Palo Alto, CA

- Taught intensive 3-week mathematics courses to gifted youth ages 10-12
- Designed the curriculum for each course, heavy on hands-on lessons on advanced concepts such as fractal geometry, modular arithmetic, recurrence relations, and countability of sets

Carleton College Summer Math Program for Women

Summer 2008

Program Assistant

Northfield, MN

- Managed program logistics such as housing, food, weekend activities, and supply acquisition

Carleton College Department of Mathematics

September 2007 - June 2008

Teaching Intern

Northfield, MN

- Ran weekly problem-solving sessions, graded homework, and held office hours for Calculus I, Multivariable Calculus, and Introduction to Mathematics
- Assisted faculty in writing and grading exams and managing other course logistics

Wabash College

Summer 2006

Undergraduate Researcher

Crawfordsville, IN

- Completed a research project on the chromatic number of the zero-divisor graphs of the groups Z_n , resulting in a publication

NON-TECHNICAL EXPERIENCE

Visible Bodies

January 2011 - present

*Founder, Producer, & Video Editor**San Diego, CA, Oakland, CA & Minneapolis, MN*

- Produced narrated photography exhibits in two major cities showcasing the lives of transgender individuals
- Raised funds, solicited photographers, managed community relationships, maintained a fiscal sponsorship, and arranged exhibitions across the United States and in Europe
- Collaborated with established for-profit and non-profit organizations to create educational materials and events for trans people

Transgress Press

August 2013 - April 2014

*Social Media Consultant & Event Organizer**Oakland, CA*

- Maintained the social media presence for a grassroots publishing company, tripling its Facebook following to 1000+
- Organized book release events in several major cities across the United States

Hillcrest Youth Center

March 2010 - June 2013

*Group Facilitator**San Diego, CA*

- Served as a mentor and discussion group facilitator at a drop-in center for LGBT teenagers

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Duane, Adrian S., Garsia, Adriano, and Zabrocki, Michael, *A new "dinv" arising from the two-part case of the shuffle conjecture*, Journal of Algebraic Combinatorics, published online June 26, 2012.

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Educational Game Designer at MIND Research Institute

Relationship: Colleague at IXL Learning

- Email: ninawu88@gmail.com
- Phone: (239) 297-5601

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Owner and Surgeon at Brownstein & Crane Surgical Services

Relationship: Collaborator on the Trans Health Video Project

Email: curtis@brownsteincrane.com

- Phone: (603) 667-5555

Jeff Remmel

Professor of Mathematics at UC San Diego

Relationship: Dissertation advisor

- Email: jremmel@math.ucsd.edu

Zander Keig

Licensed Clinical Social Worker at the Veterans' Administration

Relationship: Colleague at Transgress Press

- Email: zander.keig@gmail.com
- Phone: (415) 504-7149

Exhibit 24-3:

Application for an after-school math teaching position on
July 28, 2015
(EEOC_000660-EEOC_000662)

From: A. Scott Duane <adrian.duane@gmail.com>
Sent: Tuesday, July 28, 2015 5:24 PM
To: jzncn-5145398612@job.craigslist.org
Subject: Math teaching position
Attach: tech_plus_resume.pdf

Hello,

I saw your ad on Craig's list for an after school math teaching position. I have a PhD in math, experience teaching at the college level, and experience teaching ages 8-12 in the setting of a gifted/talented summer program. I've attached my resume for your consideration.

Best,

Scott Duane

A. SCOTT DUANE

1538 Lexington Ave ◊ El Cerrito, CA 94530
(507) 581-4100 ◊ adrian.scott.duane@gmail.com

EDUCATION

- University of California, San Diego** *June 2013*
Ph.D. in Mathematics
GPA: 3.93
Research area: Algebraic and enumerative combinatorics
- Carleton College** *June 2007*
B.A. in Mathematics
GPA: 3.56
Magna cum laude graduate

PROGRAMMING LANGUAGES

Java (fluent), Ruby (proficient), Python (proficient), Swift (proficient), HTML/CSS (proficient), R (proficient), Matlab (proficient), Maple (proficient)

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- IXL Learning** July 2013 - January 2015
Product Analyst *San Mateo, CA*
- Managed the entire development cycle for K-12 math practice software, including brainstorming new skills, designing questions and explanations, writing specifications, testing, and debugging
 - Created new user interfaces, such as customized iPad and Android tablet keyboards and a sinusoidal graphing component
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Teaching Assistant *San Diego, CA*
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Associate Instructor *San Diego, CA*
- Instructor of record for a university-level Precalculus course
- Johns Hopkins Center for Talented Youth** Summers 2010 - 2012
Instructor *La Jolla, CA & Palo Alto, CA*
- Taught intensive 3-week mathematics courses to gifted youth ages 10-12
 - Designed the curriculum for each course, heavy on hands-on lessons on advanced concepts such as fractal geometry, modular arithmetic, recurrence relations, and countability of sets
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Program Assistant *Northfield, MN*
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Teaching Intern *Northfield, MN*
- Ran weekly problem-solving sessions, graded homework, and held office hours for Calculus I, Multivariable Calculus, and Introduction to Mathematics
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- Wabash College** Summer 2006
Undergraduate Researcher *Crawfordsville, IN*
- Completed a research project on the chromatic number of the zero-divisor graphs of the groups Z_n , resulting in a publication

NON-TECHNICAL EXPERIENCE

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January 2011 - present

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- Raised funds, solicited photographers, managed community relationships, maintained a fiscal sponsorship, and arranged exhibitions across the United States and in Europe
- Collaborated with established for-profit and non-profit organizations to create educational materials and events for trans people

Transgress Press

August 2013 - April 2014

*Social Media Consultant & Event Organizer**Oakland, CA*

- Maintained the social media presence for a grassroots publishing company, tripling its Facebook following to 1000+
- Organized book release events in several major cities across the United States

Hillcrest Youth Center

March 2010 - June 2013

*Group Facilitator**San Diego, CA*

- Served as a mentor and discussion group facilitator at a drop-in center for LGBT teenagers

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Duane, Adrian S., Garsia, Adriano, and Zabrocki, Michael, *A new "dinv" arising from the two-part case of the shuffle conjecture*, Journal of Algebraic Combinatorics, published online June 26, 2012.

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Relationship: Collaborator on the Trans Health Video Project

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Jeff Remmel

Professor of Mathematics at UC San Diego

Relationship: Dissertation advisor

- Email: jremmel@math.ucsd.edu

Zander Keig

Licensed Clinical Social Worker at the Veterans' Administration

Relationship: Colleague at Transgress Press

- Email: zander.keig@gmail.com
- Phone: (415) 504-7149

Exhibit 24-4:

Application for a math tutoring position on July 30, 2015
(EEOC_000472-EEOC_000474)

From: A. Scott Duane <adrian.duane@gmail.com>
Sent: Thursday, July 30, 2015 12:40 PM
To: qtr4q-5137297178@job.craigslist.org
Subject: Math tutoring position
Attach: tech_plus_resume.pdf

Hello,

I saw your ad on Craig's list for a math tutoring position. I have a PhD in math, and taught at the college level for five years while getting my degree. Additionally, I have several years experience tutoring high school students.

I've attached my resume for your consideration. Best,

Scott Duane

A. SCOTT DUANE

1538 Lexington Ave ◊ El Cerrito, CA 94530
(507) 581-4100 ◊ adrian.scott.duane@gmail.com

EDUCATION

University of California, San Diego

June 2013

Ph.D. in Mathematics

GPA: 3.93

Research area: Algebraic and enumerative combinatorics

Carleton College

June 2007

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GPA: 3.56

Magna cum laude graduate

PROGRAMMING LANGUAGES

Java (fluent), Ruby (proficient), Python (proficient), Swift (proficient), HTML/CSS (proficient), R (proficient), Matlab (proficient), Maple (proficient)

TECHNICAL EXPERIENCE

IXL Learning

July 2013 - January 2015

Product Analyst

San Mateo, CA

- Managed the entire development cycle for K-12 math practice software, including brainstorming new skills, designing questions and explanations, writing specifications, testing, and debugging
- Created new user interfaces, such as customized iPad and Android tablet keyboards and a sinusoidal graphing component

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September 2008 - June 2013

Teaching Assistant

San Diego, CA

- Courses included Precalculus, Single and Multivariable Calculus, Linear Algebra, Differential Equations, and Mathematical Reasoning (proof writing)

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Johns Hopkins Center for Talented Youth

Summers 2010 - 2012

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Northfield, MN

- Managed program logistics such as housing, food, weekend activities, and supply acquisition

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Northfield, MN

- Ran weekly problem-solving sessions, graded homework, and held office hours for Calculus I, Multivariable Calculus, and Introduction to Mathematics
- Assisted faculty in writing and grading exams and managing other course logistics

Wabash College

Summer 2006

Undergraduate Researcher

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- Completed a research project on the chromatic number of the zero-divisor graphs of the groups Z_n , resulting in a publication

NON-TECHNICAL EXPERIENCE

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January 2011 - present

*Founder, Producer, & Video Editor**San Diego, CA, Oakland, CA & Minneapolis, MN*

- Produced narrated photography exhibits in two major cities showcasing the lives of transgender individuals
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Transgress Press

August 2013 - April 2014

*Social Media Consultant & Event Organizer**Oakland, CA*

- Maintained the social media presence for a grassroots publishing company, tripling its Facebook following to 1000+
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Hillcrest Youth Center

March 2010 - June 2013

*Group Facilitator**San Diego, CA*

- Served as a mentor and discussion group facilitator at a drop-in center for LGBT teenagers

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Relationship: Collaborator on the Trans Health Video Project

Email: curtis@brownsteincrane.com

- Phone: (603) 667-5555

Jeff Rimmel

Professor of Mathematics at UC San Diego

Relationship: Dissertation advisor

- Email: jremmel@math.ucsd.edu

Zander Keig

Licensed Clinical Social Worker at the Veterans' Administration

Relationship: Colleague at Transgress Press

- Email: zander.keig@gmail.com
- Phone: (415) 504-7149

From: App Academy Admissions <admissions@appacademy.io>
Sent: Thursday, May 7, 2015 8:29 PM
To: Scott Duane <adrian.scott.duane@gmail.com>
Subject: Congratulations, Scott!
Attach: job-search-agreement.txt; affirmation-regarding-employment.txt; placement-fee-contract.txt; logistics-percentage.txt; course-rules.txt; waiver.txt; deposit-agreement.txt

Hi Scott!

Yay! We think you'd be a great fit for App Academy and we'd love to have you join us! Many highly qualified applicants applied, and we took great care to select those with exceptional backgrounds and potential. You stood out to us!

Your cycle runs: **Mon, Aug 24 2015 - Fri, Nov 13 2015.**

We're very proud of the Rails and Backbone program we've put together, and we think it will be a great opportunity for you. Working as a software developer is an exciting, rewarding career, and we're so excited to work with you toward that goal.

Please read on for the next steps to complete your enrollment!

Next steps

Accepting your offer

The first step is for you to decide whether to accept our offer and let us know whether you will attend. Because we need to let someone in off the wait list if you cannot come, **we need to know within seven days of sending you your acceptance whether you will attend.**

Transferring your initial deposit

Next, we'll need to arrange to collect your initial deposit to reserve a spot in the program. Please see the attached logistics document for instructions.

Job Placement Fee

We have attached a job placement fee contract. Please sign it and submit it through HelloSign.

Preparatory Material

We have assembled some preparatory material for you to complete before the program begins. You can find it [here](#).

The prep work is designed to get you up to speed and ready to hit the ground running on day one. We know that you may have other obligations in advance of the program; the prep work has been designed not to be onerous, it focuses on basics.

That said, the prep work is essential; for that reason, we require that you complete it three weeks before the program begins. Please notify us when you have completed this work, so we can send you your first quiz!

We look forward to seeing your work!

Mailing List

As soon as you register for the program, we can add you to your cycle's mailing list. We have found that your App Academy fellows are a wonderful personal and professional resource. In particular, we encourage you to look for roommates and housing with them, arrange to meet each other, and collaborate on the prep work.

You may apply for the mailing list [here](#).

Thanks so much! We look forward to working with you!

Summary

You're accepted! Please complete these steps to enroll!

- Email us that you will attend.
- Transfer initial \$1,250 deposit; sign and email deposit agreement to contact@appacademy.io.
- Sign and email job placement contract via HelloSign.
- Sign and email the job search agreement via HelloSign.
- Sign and email the liability waiver via HelloSign.
- Begin prep work (to be completed three weeks before program starts).

Kush Patel
Ned Ruggeri
www.appacademy.io

From: noreply@mail.hellosign.com on behalf of HelloSign <noreply@mail.hellosign.com>
Sent: Wednesday, May 13, 2015 5:04 PM
To: adrian.scott.duane@gmail.com
Subject: Your document has been sent to contact@appacademy.io
Attach: Job_Search_Agreement.pdf



The easiest way to sign and send documents online

Document sent!

Your document has been sent to contact@appacademy.io. You can see your document anytime by clicking [View document](#).

[View document](#)

Thanks for going paperless!
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HelloSign — Sign Documents Online
HelloSign for Gmail — Sign from Gmail

944 Market Street
San Francisco, CA
94102

[Add us to your address book](#)

Job Search Agreement

I hereby affirm that I shall make a reasonable, good-faith effort to find a position as a full-time software developer in either the San Francisco, Silicon Valley or New York area in the twelve months following the completion of my program at App Academy. (I acknowledge that it's important to target my job search in these locations since that is where the software development jobs are concentrated.) I shall seek to find employment in such a position and shall not work on any entrepreneurial activities of my own, including developing a private business, company, or other enterprise by myself or with others, and building any applications or projects for any non-educational purpose.

You agree that in the event that you take a software development position outside either the San Francisco Bay Area or New York City, AND if the percentage-based placement-fee you would owe is less than \$18,000, your contract will be converted from a percentage-based agreement to a fixed-fee agreement in the amount of \$18,000. We require this to ensure that students make a good-faith effort to search in the SF Bay Area and NYC.

I also agree to maintain a record documenting my efforts to find such employment, including, but not limited to, information about job contacts, in writing; the names of the employers contacted; the date(s) the contact was made; whether the contact was in person, by phone, or via internet; and the result of the contact.

The undersigned acknowledges that the foregoing job search, location, and documentation requirements are intended to ensure - and confirm - that the applicant makes a good-faith effort to obtain software developer employment and that the applicant's failure to make such a good-faith effort would deprive App Academy of the agreed-upon payment to which it is entitled. Accordingly, the undersigned agrees that if he/she fails to comply with each and every one of the foregoing job search, location, and documentation requirements, he/she shall pay App Academy the agreed upon compensation (\$18,000) as if he or she found employment as a software developer.

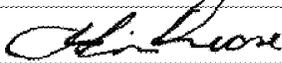
Attorneys' Fees

The prevailing party shall have the right to collect from the other party its reasonable costs and necessary disbursements and attorneys' fees incurred in enforcing this Agreement.

Print Name: Adrian Scott Duane

Address: 

Social Security Number: 

Signature: 

Date: 05 / 13 / 2015

From: Adam Frey <adam@wikispaces.com>
Sent: Wednesday, December 16, 2015 2:28 PM
To: adrian.scott.duane@gmail.com
Subject: Employment Offer
Attach: Tangient LLC Employment Offer Letter - Duane, Scott.pdf; Tangient LLC Confidential Information and Inventions Agreement.pdf

Dear Scott,

We are very pleased to send you the attached Employment Offer Letter for the position of Software Engineer at Tangient LLC.

Please review the Employment Offer Letter and the accompanying Confidential Information and Inventions Agreement. If you have any questions about the documents or the offer I am available by phone or email. If you would like to accept the offer please sign and return both by email.

We are all very excited about the prospect having you join the team and we are looking forward to working with you.

Yours,
Adam Frey
Wikispaces
415-863-8919



Offer Letter

Confidential

Tangient LLC Offer Letter

To: Scott Duane
170 Vernon Terrace, Suite 2
Oakland, CA 94610

Dear Scott:

It is our pleasure to present you this offer of employment for the position of Software Engineer at Tangient LLC (the "Company"). The details below outline the terms of this offer as well as the specific responsibilities, compensation, and benefits of the position.

Position. You shall perform such duties as are typical and customary of individuals in similar positions, subject at all times to our instructions, control and direction and the terms and conditions of this Agreement. You shall have such other duties as we, in our sole discretion, shall determine and assign. You agree that, while employed by the Company, you will devote your full-time efforts to your responsibilities and will not engage in any other activities that would be in conflict with the best interests of the Company. Your first day of employment shall be 4 Jan 2016.

Term and Termination. You understand that your employment with the Company is "at will" and can be terminated by the Company at any time with or without cause. Employment is a mutual agreement between you and the Company and can be terminated by either party at any time.

Compensation and Benefits. We shall pay you at the rate of \$100,000 per year payable twice a month. This compensation is a pre-deduction gross amount with taxes, social security, and other standard deductions being deducted per regulations each pay period.

You shall be entitled to participate in such benefit plans as are generally made available by the Company to its employees from time to time, which shall include medical insurance. Such participation shall be subject to the terms of the applicable plan documents. You will not receive any other benefits of any kind from the Company in connection with your employment.

Confidential Information and Inventions Agreement. As a condition of your employment with the Company, you agree to execute a Confidential Information and Inventions Agreement in the form attached hereto.

Personnel Manual. The Company reserves the right to modify its employment practices from time to time to meet current legal requirements and to respond to current business conditions and strategies. Accordingly, by entering into this agreement, you agree that the terms of this agreement are subject to periodic modification by a Company personnel manual as adopted and amended from time to time. At such time as the Company adopts a personnel manual, you should refer to the then current version of the manual for guidance on any matters concerning your employment.

Governing Law. This agreement will be governed by the internal laws of the State of California as applied to contracts made and to be performed in California between residents of California. If any provision of this agreement is held to be unenforceable or invalid, the remainder of this agreement will nevertheless remain in full force and effect.

Sincerely,

Adam Frey
Tangient LLC

Agreed to and accepted as of _____, 2015.

Signature of Employee



Confidential

Tangient LLC
Employee Confidential Information and Inventions Agreement

As an employee of Tangient LLC, a California limited liability company (the “Company”), I recognize that the Company is engaged in a continuous program of research and development. This Agreement is in consideration for my employment or continued employment with the Company and the compensation received by me from the Company. I hereby agree as follows:

1. Protection of Confidential Information. I agree at all times during the term of this employment and thereafter, to hold in strictest confidence, and not to use, except for the benefit of the Company, or to disclose to any person, firm or corporation without written authorization from the Company, any Confidential Information of the Company. I understand that “Confidential Information” means any Company proprietary information, technical data, trade secrets or know how, including, but not limited to, research, product plans, products, services, customer lists and customers (including, but not limited to, customers of the Company on whom I called or with whom I became acquainted during the term of my employment), markets, marketing, finances or other business information disclosed to me by the Company either directly or indirectly in writing, orally or by drawings or observation of parts or equipment. I further understand that Confidential Information does not include any of the foregoing items which have become publicly known and made generally available through no wrongful act of mine.

2. Return of Materials. All apparatus, computers, computer files and media, data, documents, drawings, engineering log books, equipment, inventor notebooks, programs, prototypes, records, samples, equipment and other information and physical property, whether or not pertaining to Confidential Information, furnished to me by the Company, or produced by me or others in connection with my employment, shall be and remain the sole property of the Company and shall be returned promptly to the Company as and when requested by the Company.

3. Ownership and Protection of Inventions.

3.1 The Company Owns Inventions. I agree that any and all Inventions shall be the sole property of the Company and its assigns, and the Company and its assigns shall be the sole owner of all patents, trademarks, copyrights and other rights in connection with such Inventions. For purposes of this Agreement, “Inventions” means all data, discoveries, designs, developments, formulae, ideas, improvements, inventions, know-how, processes, programs, and techniques, whether or not patentable or registrable under copyright, trademark or similar statutes, and all designs, trademarks and copyrightable works that I made or conceived or reduced to practice or learned, either alone or jointly with others, during the period of my employment.

3.2 Inventions Protection. I hereby assign to the Company any and all rights that I may have or acquire in Inventions. In addition, to the extent permitted by federal copyright law, the parties agree that any works resulting from my work under this Agreement shall be “works for hire” as defined in the federal copyright law. I hereby assign to the Company all of my works of authorship and all rights of copyright, trademark, patent and other such rights, including, to the full extent permitted by law, “moral rights” and rights under Section 987 of the California Civil Code, in such works to the extent such works result from work under this Agreement (“Intellectual Property Rights”). I further agree, as to any and all Inventions, to assist the Company in every proper way (but at the Company’s expense) to obtain and from time to time enforce Intellectual Property Rights in connection with Inventions in any and all countries.

4. Equitable Relief. I acknowledge that any breach or threatened breach by me of this Agreement will result in immediate and irreparable harm to the Company, for which there will be no adequate remedy at law, and that the Company will be entitled to injunctive relief to restrain me from violating this Agreement or to compel me to cease and desist all unauthorized use and disclosure of the Confidential Information, without posting bond or other security. I will indemnify Company against any costs, including reasonable legal fees, incurred in obtaining relief against my breach of this Agreement. Nothing in this section shall be construed as prohibiting the Company from pursuing any other remedies available to it for such breach or threatened breach, including recovery of damages from me.



Confidential

5. **Severability.** If any term or provision of this Agreement shall be declared invalid, illegal or unenforceable, such term or provision shall be amended to achieve as nearly as possible the same effect of protecting Confidential Information as the original term or provision, and all remaining provisions shall continue in full force and effect.

6. **Section 2870 Inventions.** This Agreement does not apply to inventions that qualify fully for protection under Section 2870 of the California Labor Code ("Section 2870"). Currently, Section 2870 applies to inventions for which no equipment, supplies, facility or trade secret information of the Company was used and which was developed entirely on my own time, and (a) which does not relate, at the time of conception or reduction to practice of the invention, to the business of the Company, or to the Company's actual or demonstrably anticipated research or development, or (b) which does not result from any work performed by me for the Company.

7. **Effective Date.** This Agreement shall be effective as of the first day of my employment by the Company.

8. **Binding Effect.** This Agreement shall be binding upon my heirs, executors, administrators or other legal representatives and shall inure to the benefit of successors and assigns of the Company.

9. **Entire Agreement.** This Agreement constitutes the full, complete and exclusive agreement between the Company and me with regard to this Agreement's subject matter. This Agreement supersedes any previous agreements or representations, whether oral or written, express or implied between the Company and me with respect to its subject matter. This Agreement shall not be modified unless in writing, signed by me and an authorized representative of the Company.

10. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of law principles thereof.

Dated: _____

EMPLOYEE

COMPANY

Tangient LLC
a California limited liability company

Name:

Name: Adam Frey

Signature



Signature

From: Haseeb Qureshi <haseeb@appacademy.io>
Sent: Monday, December 14, 2015 9:14 PM
To: Scott Duane <adrian.scott.duane@gmail.com>
Subject: Congratulations!

Hey Scott,

We want to make you an offer! We think you'd be a perfect fit for the role. You possess a very strong grasp of pedagogy and algorithms, you seem like a natural teacher, and you're clearly an extremely sharp guy. Most of all, I'd love to see what you can do to improve the course. :)

I'll send over an offer letter by tomorrow morning. Unfortunately was a little too late tonight to get Kush to draft one. But I'll do my best to have it back to you first thing tomorrow!

Haseeb

--

Haseeb Qureshi
Director of Product
appacademy.io